

ARTICLE 2

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY & RECOMMENDATION:

There are no collective bargaining agreements that require Town Meeting approval at this time.

By a unanimous vote Advisory Committee recommends NO ACTION on Article 2.

ARTICLE 4

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 4, as submitted, is a duplicate of Special Appropriation Item 32 under Article 9 in the May 2019 Town Meeting Warrant, which provided for funding the construction of a new Driscoll School.

As previously published in the combined Reports, The Advisory Committee recommends FAVORABLE ACTION on Article 4, as amended.

SUPPLEMENTAL NOTE:

The original motion under Warrant Article 4 authorized the Select Board to seek a \$108 million override to reconstruct the Driscoll School.

When Article was reconsidered on November 7, 2019 in order to reconcile it with the Select Board's motion, the Advisory Committee learned that the Select Board was considering asking Town Meeting to authorize a \$119 million override. Additional funds might be used to add school administrative offices to the site, thereby replacing the ongoing cost of renting office space, and accommodate the increase in building costs that the seven-month delay following the defeat of the May 2019 override.

Given the defeat of the May 2019 override for reconstruction of Driscoll and the construction of new K-8 school at the Baldwin site, several Advisory Committee members were deeply concerned by the proposed increase. They posited that while the Driscoll override might pass, the impact on residential real estate taxes would be such that future school construction overrides would be at risk.

The Advisory Committee did not change its recommendation of FAVORABLE ACTION on Article 4, but its recommendation remains at \$108 million. In advance of Town Meeting, the Committee may be asked to vote on a resolution asking for the Driscoll reconstruction project to be put on hold so that the school can be redesigned to substantially reduce costs.

ARTICLE 4

**AMENDMENT OFFERED BY HARRY FRIEDMAN TMM12**

Substitute \$98,000,000 for the \$108,000,000, and delete the language referencing finding office space for district-wide staff.

VOTED: That the Town appropriate, borrow, or transfer from available funds up to ~~\$108,800,000~~\$98,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, ~~including the evaluation of the feasibility of providing office space for district wide staff of the Brookline Public Schools~~, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Clean version of motion:

VOTED: That the Town appropriate, borrow, or transfer from available funds up to \$98,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Explanation:

Other cities and towns build schools less expensively than Brookline does on a cost per square foot basis and on a cost per student basis. While not each and every one of these other schools is directly comparable to a specific Brookline school, there are lessons to be learned from these other towns. The reduction to \$90 million is a 10% reduction, and it would appear achievable by, for example, cutting the garage and atrium out of the Driscoll design, as well as asking the architects to come up with other cost-saving measures. Saving is important because each dollar we spend on school construction adds to the tax levy as well as limits the borrowing capacity of the town. Where this comes into play is for future school projects, such as the Pierce and Baker school projects. Unnecessary spending on early projects just makes it more likely that the voters will reject later projects. It's time we looked at school construction costs as part of a planned series of projects, as opposed to treating each school project as a standalone, with no effect on what we have to do in future years.

The reference to school administration offices is deleted because it is considerably cheaper to rent office space than to build offices into a school.

ARTICLE 4

**MOTION OFFERED BY C. SCOTT ANANIAN TMM10**

VOTED: That the town appropriate, borrow, or transfer from available funds up to \$115,300,000 to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a fossil-fuel-free four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Motion Marked against the AC motion:

That the town appropriate, borrow, or transfer from available funds up to ~~\$108,800,000~~ **\$115,300,000** to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a **fossil-fuel-free** four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, ~~including the evaluation of the feasibility of providing office space for district wide staff of the Brookline Public Schools~~, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Explanation:

**A motion to preserve a fossil-fuel free Driscoll**

Given construction cost inflation in the Boston area, which is as high as 15.7% for FY2020 given MSBA school construction cost data, the architect for the Driscoll project recommends a 10% increase over the original FY2019 bid price. The architect's projected total costs are:

	<b>FY2019 Total Project Cost</b>	<b>FY2020 Total Project Cost</b>
Building and Site	\$96.6M	\$106.3M
Play Area:	\$2.5M	\$2.7M
Structured Parking:	\$3.4M	\$3.8M
Fossil Free Allowance:	\$6.3M	\$6.9M
<b>Total:</b>	<b>\$108.8M</b>	<b>\$119.7M</b>

The Advisory Committee and Select Board have emphasized the need to contain costs, and both have advanced a motion allocating only the original \$108.8M for the Driscoll school. Given the financial realities of building cost inflation, it appears that a straightforward way to bring the project back to the original budget is to sacrifice structured parking and the fossil fuel free building:  $\$119.7\text{M} - \$6.9\text{M} - \$3.8\text{M} = \$109\text{M}$ .

In order to safeguard the fossil-fuel free construction, which Town Meeting voted on as part of the schematic design but has not yet affirmed for the final building, **this motion adds the original FY2019 \$6.3M fossil fuel free allowance back to the \$109M to arrive at a final budget of \$115.3M.** The FY2019 FFF allowance was used as a member of the Advisory Committee opined that fossil fuel free systems have in fact been trending downward in price, and would likely be an exception to the overall construction cost inflation.

This motion also strikes the administrative space from the appropriation, in keeping with the constrained budget and the questionable cost-effectiveness of adding office space to a building constructed to school standards.

ARTICLE 4

**SCHOOL COMMITTEE RECOMMENDATION**

On September 26, 2019, the Brookline School Committee voted unanimously with 9 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Mr. Glover, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 4: Appropriation for a Four Section Driscoll School.

## ARTICLE 5

### **SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

On September 26, 2019, the Brookline School Committee voted with 6 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Ms. Scotto), 1 opposed (Mr. Pearlman) , and 2 abstentions (Dr. Abramowitz and Ms. Ditzkoff), to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 5: Authorization for the Disposal and Sale of the Real Property at 15-19 Oak Street.

#### Financial Rationale:

The Town paid \$4.7 million for the three properties. The interest cost for the FY 2020 Bond Anticipation Notes (BAN) from March-March was \$140,217 (net interest cost 1.72%). According to Deputy Town Administrator Melissa Goff, BAN costs would be similar for a 3-5 year BAN. If the Town wanted to pay interest and principal, the cost would be conservatively speaking \$333,477 for a 25-year term bond to pay both interest and principal at 5%. Ms. Goff believes that this is a very conservative estimate.

If the Town was able to get \$4,000.00 in rent per unit, the Town would get \$144,000 a year and if the rent were \$4,500 the amount would be \$162,000 which would cover any expenses and might leave the Capital Improvements Program (CIP) with a bit of money.

#### Strategic Rationale:

More importantly, the Town should not give up a property that the Town owns now when everything is in such flux. The Town can always sell the property later on if it is not needed. (The example was brought up of Sewall School on Cypress Street and if the Town still had this property, the Town might be able to solve our overcrowding issues).

Because the Oak Street property is adjacent to the Baldwin School site, the Baldwin Playground, and Soule, it is strategically situated and could be used for many School, Town, or Park uses. As one example, it could be used along with the Baldwin Playground for field space.

In addition, since the Town has not solved the serious overcrowding issues in our schools, the School Committee asks the Select Board to keep the Oak Street property.

The Oak Street site combined with the Baldwin parcel increases the value and potential use of both sites.

Land is scarce in Brookline and the Town should not sell properties at this time. The School Committee encourages Town Meeting to vote no action on Article 5.



## ARTICLE 5

### ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

#### Summary

Article 5 authorizes, but does not require, the Select Board to Sell 15-19 Oak Street.

The Advisory Committee unanimously voted to approve Article 5 (vote of 23-0-0).

#### Background

Article 5 would authorize the Select Board to sell three residential condominiums at 15-19 Oak Street that were purchased in anticipation of a successful debt exclusion vote for the previously proposed Baldwin School project. The properties were acquired after Town Meeting authorized their purchase in December of 2018 and in advance of the debt exclusion vote. The transaction was completed in early 2019 and the cost of debt service for the acquisition was incorporated into the debt exclusion referendum which was rejected by Brookline voters at the Annual Town Election on May 7, 2019. The acquisition of the properties was achieved via the issuance of Bond Anticipation Notes (BANs). With the failure of the debt exclusion referendum and no plans to pursue the Baldwin School further, the original rationale for their acquisition no longer exists. At the time of the filing of the Article, the School Committee had proposed using the Oak Street condominiums as office space beginning in the fall of 2020 as part of their overall space planning. For a variety of reasons, including renovation expense and a number of zoning and building code requirements to convert the Oak Street residential properties into office use, the School Committee is no longer proposing the office idea. Currently, the Town is exploring a possible ninth school on Fisher Hill, the acquisition of which (or any other future school development project) may benefit from having the ability to sell the properties expeditiously. The approval of the Article by Town Meeting does not compel the Select Board to sell the properties. An affirmative vote would merely provide the Select Board with the authority to take such action (and indeed, the Select Board filed an identical article for consideration at this Town Meeting). Any sale would require a public process. The Select Board would also determine the timing of such a sale, if one occurs.

#### Discussion

The Committee agreed that the Select Board should be given the authority to sell the properties. The principal conversations revolved around whether an additional recommendation regarding the timing of a sale should be offered as well as whether to include a sunset provision on the authority approval of Article 5 would bestow.

In discussing the timing of a sale, several facts were reviewed that an analysis would need to consider:

1. The Town currently is financing the properties using interest only short-term debt. Though short-term debt can continue to be used for as long as 10 years, amortization of the debt must begin in the third year after acquisition. Also, if the property is held as income producing, the Town would need to use taxable debt as opposed to tax-exempt debt. The estimated current interest-only cost to the Town is approximately \$147,000. That would increase to approximately \$298,000 once amortization is required.<sup>1</sup>
2. The debt service will crowd out other projects in the CIP
3. Any rental income must be placed into a revolving fund for the maintenance of the properties and could only be added to free cash (hence back to the CIP) at the end of a fiscal year.
4. Market rent likely will be insufficient to enable the Town to break-even
5. If the properties were sold and put back onto the tax rolls, it would be considered new growth, generating approximately an additional \$45,000 in tax revenue.
6. As the debt is amortized, the Town would build equity in the properties like any homeowner does.
7. There is option value to holding the assets, particularly if there are reasonably anticipated and viable uses for the properties.
8. The properties were purchased entirely with debt. A sale does not generate cash (unless there is a profit) but it does free up borrowing capacity as well as some cash flow.
9. Ownership could result in appreciation if Brookline's market stays robust but it could result in price depreciation if the market falters or the property suffers damage from renters.
10. Being a landlord carries risks and responsibilities the Town may not be well-prepared to manage.

The rest of the discussion revolved around whether a sunset provision to the authorization was warranted and whether the Committee should offer a recommendation about the timing of a sale.

The argument for a sunset provision generally revolved around the idea of reminding the Select Board (or a future Select Board) that they actually had the ability to take an action with the properties and that, at a particular point in time, they would lose that authority. To many, that seemed counter to the very notion that by giving the executive branch the authority, they were being entrusted with the responsibility of evaluating all the facts and determining when the appropriate time to dispose of the assets (if ever) would be. Too, it was pointed out that setting a sunset provision could result in a poorly timed action under adverse market conditions because of the fear that the authority would not be regranted.

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<sup>1</sup> Assuming a 3% cost of capital

There was also a general sense that the Committee believes the Select Board should be encouraged to dispose of the properties sooner rather than later in large part because there is no obvious strategic use for them, the cash flow impact on the CIP is meaningful and because they can be revenue positive due to the new growth classification. This general sense led to the separate resolution the Advisory Committee has sent to the Select Board.

Recommendation

A motion to amend the Article and add a 5-year sunset provision failed by a vote of 2-20-1

The Committee then unanimously voted favorable action on Warrant Article 5 by a vote of 23-0-0.

ARTICLE 7

**MOTION OFFERED BY THE PETITIONERS**

VOTED: That the Town adopt the following resolution:

A resolution calling for the Town to properly maintain street markings for all modes of travel.

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and

Whereas the Town of Brookline’s Complete Streets Policy states that “The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating *complete streets*,” and

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety—such as crosswalks and bike lanes—has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed.

And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, mass transit, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.

**PETITIONER MOTION MARKED AGAINST ADVISORY COMMITTEE  
MOTION** (deletions struck, additions in bold and underlined)

To see if the Town will adopt the following resolution:

**A resolution calling for the Town to properly maintain street markings for all modes of travel.**

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and,

Whereas the Town of Brookline's Complete Streets Policy states that "The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating *complete streets*;" and,

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety—such as crosswalks and bike lanes—has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

**Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed**

**And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, mass transit and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.**

~~Now therefore be it resolved that Town Meeting strongly encourages the Town to include sufficient funds in the operating budget to allow for proper maintenance of street markings for automobile, bicycle, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.~~

ARTICLE 8

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 8 would authorize the Select Board to file a Home Rule petition to allow the Town to offer additional discounts of the water and sewer fees to eligible seniors (65 and over) who participate in the Tax Deferral program and Senior Tax Work-off Exemption program.

If passed by the Legislature, the Select Board would then determine criteria and implement the program.

The Advisory Committee recommends FAVORABLE ACTION on Article 8.

BACKGROUND:

The price of water in the U.S. has increased rapidly in recent years. The average water and sewer bill increased 3.6% from 2018 to 2019, the eighth consecutive year of increase. This year, Americans nationwide will pay an average \$104 per month in water and wastewater bills, an increase of 31% since 2012, far exceeding inflation.

The Town offers water and sewer bill discounts to individuals who meet 17D and 41C property tax exemption criteria. Currently, 7 people are taking advantage of the program. It is estimated that the number could increase to between 40 to 50 people. The cost of fully implementing this program is estimated to be less than \$30,000. The water bill comprises both a usage rate and a base rate, which helps to cover infrastructure costs. The base charge for water and sewer recoups about 15% of the cost. Seniors on the above mentioned programs currently get a 50% discount on the base rate. To be eligible, one must be 65 years old, a MA resident for 10 years, homeowner for 5 years, and income eligible. Income eligibility is based on income and assets, but exclude the house. It is the same criteria as the Tax Deferral and Senior Work-off programs. The Assessor’s Office determines who qualifies.

DISCUSSION:

The petitioners expressed concerns as to how long a home rule petition would take to wind its way through the State House. This process can typically take months to years, if it survives the legislative session, and if it does not, it would have to be refiled in the next session. There is language in state law that seemed to indicate that the Town can already do what the article asks under Chapter 41, section 69B, and some towns apparently do use Chapter 41 now, while others do not. While there is the question as to whether the Select Board could do this now under Chapter 41, the Water & Sewer Department is hesitant to implement a program without the home rule petition.

Deputy Town Administrator Melissa Goff had discussed this with the Town Counsel Joslin Murphy, and it was Town Counsel's opinion that we should file the home rule petition.

She wrote:

*"We have determined that in order to offer the proposed senior water and sewer rate discount, the Town will need to seek special legislation. I note, as you have, that several communities apparently offer this or a similar type of discount to senior ratepayers without such authority, however DOR/DLS has taken the position under Brand v. Water Commissioners of Billerica, 242 Mass. 223 (1922) that such authority is required."*

There are issues with the current program, such as being available only to homeowners, not renters. Otherwise qualified seniors who live in condos are also not eligible to take part, due to the requirement of needing to have their name on the water bill. Raising the number of eligible participants slightly will not raise rates on other ratepayers, as the cost would come out of the Enterprise Fund. Concerns of some Advisory Committee members included the fact that there are no specifics in the language, and one member noted that the warrant article called for broader authority than the rationale for the article in the petitioner's explanation. He felt that it was premature to suggest program specifics and that the legislative history should reflect a broader and more flexible view.

Approval of this article will simply give authority to the Select Board to design and implement a program.

Articles 25 and 26 of the 2018 Annual Town Meeting tasked the Town with exploring ways to provide relief to seniors who are financially stressed and risk losing their home. This proposed article would not help the vast majority of seniors who need it, but it is a first step. The Advisory Committee felt that the Select Board should also look at Chapter 41 to determine if additional help could be provided now under existing State Law. The petitioners provided a study from Northeastern University (link to the study is at the end of this report).

RECOMMENDATION:

The Advisory Committee voted to amend the article by adding the words "income eligible" in section 1, second line before "residents aged 65 and over".

By a vote of 22-3-3, the Advisory Committee recommends FAVORABLE ACTION on article 8 as amended (new language underlined):

Voted: that the Town votes to authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO OFFER A SENIOR DISCOUNT PROGRAM FOR WATER AND SEWER RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled,  
and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of  
Brookline Select Board may discount fees charged to income eligible residents aged 65  
and over for the use of the town's water and sewer system.

SECTION 2. This act shall take effect upon its passage.

<https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>



## ARTICLE 9

### ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

#### SUMMARY:

Warrant Article 9 is a home rule petition, asking the State Legislature to authorize the Select Board to file legislation authorizing the Town to levy a real estate transfer tax. Petitioners would like the Town to levy such a tax and use the revenues to support affordable housing initiatives.

The Advisory Committee recommends REFERRAL of Article 9 to the Land Bank Study Committee.

#### BACKGROUND:

While the specifics of the proposed tax would still be subject to negotiation, the petitioners propose levying a tax of not more than 2% of the portion of the purchase price exceeding \$500,000, subject to certain exemptions. Petitioners estimate that somewhere between \$5 and \$15 million could be raised annually through such a levy.

In 2018, in response to Warrant Article 24 of the Annual Town Meeting, Brookline established a Land Bank Study Committee which has, among other matters, researched a real estate transfer fee.

Neighboring communities including Concord, Cambridge, Nantucket, and Somerville have established or are establishing similar transfer fees (each with different characteristics). Nationwide, 35 states have “luxury” real estate transfer taxes. Vermont has a progressive RETT with an additional tax on out-of-state owners. Connecticut has collected \$186M from their RETT. New York City has had a “mansion” tax since 1989.

#### DISCUSSION:

The Advisory Committee supports initiatives to improve the affordable housing situation in Brookline but had many concerns regarding Article 9, including:

##### **Fairness**

Many members felt it unfair to exempt the first \$500,000 from such taxation. Petitioners argue that exemptions make the tax progressive; most committee members hewed to the idea that “everyone should be pitching in.” Another oft-expressed concern was around the fact that, as proposed, a couple who sold their single-family home in order to “downsize” and remain in Brookline would be subject to taxes on both transactions. Petitioners

acknowledged that some communities decline to tax in this situation and suggested that any final legislation would likely establish such an exemption. Finally, many members expressed concern around the impact on the elderly or other vulnerable populations, especially those whose net worth is mostly contained in their home. Although they may have experienced significant appreciation over the years, this tax may still hit many hard (or be perceived as doing so). And not every transaction will necessarily represent a profit for the seller that can offset the pain of an additional 2% tax.

### **Limitations**

Members questioned whether it was reasonable to so severely restrict the potential uses of the additional revenues. Increasing the availability of affordable housing is an admirable goal, but so is increased greenspace, school initiatives, and a variety of transportation initiatives. This is potentially a lot of money to permanently devote to a single cause, especially when increasing affordable housing almost certainly exacerbates those other needs.

### **The unusual nature of this home rule petition**

This home rule petition sets out a set of general public objectives and trusts that future negotiations between the General Court and the Select Board will result in appropriate legislation. Many members would prefer a more constrained set of specifics in a home rule petition (and, accordingly, would prefer more discussion and debate prior to filing the petition).

### **Process concerns**

A common argument was that we have only recently established the Land Bank Study Committee, which has not yet had time to do its work. Members argued that this transfer tax is clearly within the purview of the Study Committee and we should allow the committee to continue evaluating it and we should wait for the committee's recommendations.

### **RECOMMENDATION:**

A motion to refer the subject matter of Warrant Article 9 to the Land Bank Study Committee was proposed. By a vote of 19 in favor, 3 opposed, and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION ON THE MOTION TO REFER.

ARTICLE 9

**PLANNING BOARD REPORT AND RECOMMENDATION**

Article 9 submitted by citizen petitioners is a resolution to authorize the Select Board to file a petition with the State Legislature that would allow the Town to levy a real estate transfer tax (RETT). This tax would be collected when a property is sold and would be paid partly by the seller and partly by the buyer. This warrant article only allows the Select Board to file a petition with the State Legislature to allow the Town to implement the real estate transfer tax by a Town-wide vote. The details in the article could be subject to substantial modifications before any Town-wide vote on it. This article mandates that the fees collected from the RETT would be used to fund the Brookline Affordable Housing Trust Fund, which is overseen by the Housing Advisory Board. The article also recommends that the Town establish policies and/or regulations which prioritize projects with sustainable practices and are mixed-income and mixed-use.

While the Planning Board generally supports the concept of a Real Estate Transfer Tax, the Board feels that this article is premature and not yet ready for its support. A Land Bank Study Committee, which includes a member of the Planning Board, has been working on crafting a warrant article on a real estate transfer tax for the Spring Town Meeting and several details have not yet been decided, such as where funds should be allocated.

Therefore, the Planning Board voted No Action on Article 9 and to refer it back to the Land Bank Study Committee for further evaluation and development.

ARTICLE 10

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 10 would amend the Town's General By-Laws by deleting Section (G) of Article 4.9. The effect of this would eliminate the Committee on Campaigns. The rest of Article 4.9 would remain unchanged.

The Advisory Committee recommends FAVORABLE ACTION on Article 9.

BACKGROUND:

Article 4.9 was passed at the Fall Town Meeting in 2006 (Warrant Article 18) upon the recommendation of the Moderator's Committee on Campaign Finance, which formed in 2003. The Committee on Campaigns has not met in years, and the Committee's abandoned page on the Town website (<https://www.brooklinema.gov/742/Campaigns-Committee>) still lists members whose terms expired between 2012 and 2014.

Its mission, according to the webpage, included analyzing information from finance reports filed by candidates for Town Office, recommending ways to improve the process by which candidates are elected, and examining the concept of public financing of campaigns.

A report may have been filed with the Select Board's office, but its whereabouts is unknown. The Committee members considered their work complete and have not met in years. There currently are a number of dormant committees, and the Select Board filed this article after the Town Moderator recommended that this inactive committee be removed from the By-Laws.

DISCUSSION:

No (former) member of the Committee showed up to the hearing. Some members of the Advisory Committee felt strongly that the Committee on Campaigns should be revived, especially now that the Town is trying to increase diversity in Town Government as well as with the Town's various boards and commissions.

It was felt that new active committees (including CDICR) that were recently formed will be taking a look into those issues and that trying to revive this particular committee wasn't needed. The report that the committee reportedly filed before disbanding could not be located so the Advisory Committee could not examine the Committee on Campaigns' findings and conclusions.

A large majority of the Advisory Committee felt there was no need to keep this dormant committee in the By-Laws.

RECOMMENDATION:

By a vote of 22-5-1, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

Voted: that the Town votes to amend the Town's General By-Laws by deleting section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns.

## ARTICLE 12

### ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

#### SUMMARY:

Warrant Article 12 seeks authorization for the Select Board to enter into solar Power Purchase Agreements (PPAs) with other parties to install, own and operate roof-top solar power systems on six town-owned properties, over the next several years and sell the power generated to the Town.

The Advisory Committee recommends FAVORABLE ACTION on Article 12.

#### BACKGROUND:

The Town of Brookline has committed to prioritize planning to achieve zero greenhouse gas emissions by 2050 town and community wide. Municipalities can go solar by installing photovoltaic (PV) panels on a single site or a fleet of buildings. They also can choose from two models of ownership: direct ownership and third-party ownership.

Under direct ownership, the municipality pays for and owns all solar PV equipment. It reaps the full financial value of the electricity produced by its panels. With third-party ownership, a separate entity owns the solar panels installed on the municipal property, and the municipality pays the third party for the electricity produced by the panels. Municipalities pay two separate electric bills under third-party ownership: one to the utility company and one to the third-party solar owner. One of the challenges of solar power system financing is that many of the financial incentives, such as federal tax credits are not available to the town, since the town does not pay taxes.

The most common third-party arrangement is called a Power Purchase Agreement (PPA). This is the route the Select Board is asking Town Meeting to empower the Board to take.

As Brookline is not eligible to receive tax credits, a PPA enables systems installed, owned and financed through third parties which will monetize the tax credit on our behalf. These third-party investors will incorporate their tax credit savings into the cost they charge the municipality for the electricity generated.

If Brookline contracts with a third party under the PPAs, the Town will enter a Payment In Lieu of Taxes (PILOT) agreement with the Provider. This provides cost certainty over the term while capturing a fair value that reflects comparably to personal property tax.

This article is asking Town Meeting to authorize the Select Board to enter into PILOT solar agreements (20 years is a common length of time for an agreement).

The Town is working with Solec Energy that is based in Hopkinton, MA. They advertise that they offer [smart solutions](#) and proven expertise in solar development, technology, construction, policy, and [incentives](#), as well as individualized financial guidance. Solec Energy has 70 employees, manages 600 solar facilities, and has installed 500, 60 of which were under the Power Options program. Their website lists recent municipal installations in Medford, Haverhill, Holliston, and Worcester.

The envisioned agreement would allow the solar company to receive Federal tax credits and use accelerated depreciation and the Town will know when the agreement is drafted, what its costs of electricity reduction will be. Brookline can either get cash or receive a reduction in its electric bill over the years of the contract. Also, the Town may purchase the system at fair market value after seven years.

Solec Energy has already been chosen by Power Options, a non-profit energy-buying consortium, through a procurement process so Brookline will not have to engage in an open bidding process to select a provider.

#### DISCUSSION:

The Committee's concerns were around liabilities, a financial pro forma analysis and the risks and rewards. After initial concerns were raised, in a second meeting, Town staff produced an array of detailed information to the questions that had been raised by the Committee which addressed most of the concerns.

Concerned about physical roof-top liabilities, the Committee was assured that the risk for potential damage to roofs is accounted for in any contract that Select Board will sign. It was also informed that the installer has to be certified with the roofer the Town used for the original roof installation to preserve the original warranty on the roof.

While a financial pro forma was not available at this time, since there are as yet no detailed financial specifics, it was clear from the experience of other cities and towns that we would expect a reduction in electricity cost and that it was anticipated the Select Board would have such an analysis before proceeding with signing with a supplier.

In terms of other financial risk, insolvency of the supplier and that this is a 20 year "bet" on the price of electricity, were raised as the main concerns.

It was noted that when other providers in this space had gone out of or left the business, that the solar systems installed were quickly taken over by other providers in the field. Also, the panels would still be on the roof, generating electricity, so supplier insolvency is primarily a contract and administrative concern.

In terms of the "bet" on electricity prices over the next twenty years, while it seemed, given the current trend, that prices would only go up and a contract under a PPA arrangement is for a fixed 20 year Kilowatt/hour rate, Town staff indicated that, for the maximum of 6

possible projects in this article that the amount of electricity generated represents only about 10% of electricity consumed by the Town's buildings.

RECOMMENDATION:

By a vote of 20-0 with 3 abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 12.

Voted: that the Town votes to amend the Town's General By-Laws by deleting section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns.



ARTICLE 12

**SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

On October 24, 2019, the Brookline School Committee voted, with 7 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Mr. Pearlman), 0 opposed, and 1 abstention (Ms. Ditkoff) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 12: Authorization to Enter into Solar Power Purchase Agreements (PPAs) for Rooftop Solar Photovoltaic Installations on Certain Town Properties.

The Brookline School Committee supports environmental sustainability and the Town of Brookline's plan to prioritize planning to achieve zero greenhouse gas emissions by 2050. The School Committee supports a path for acquiring solar energy systems through Solar Power Purchase Agreements which include school buildings. In addition to the environmental benefits it is anticipated that there will be financial benefits to the Town.

ARTICLE 14

**SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

On October 24, 2019, the Brookline School Committee voted, with 6 in favor (Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Mr. Pearlman), 0 opposed, and 2 abstentions (Ms. Schreiner-Oldham and Ms. Ditkoff) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 14: Amend Section 6.04 of the Zoning By-law pertaining to Electric Vehicle Parking.

In future new construction and renovation projects at sites owned or operated by the Public Schools of Brookline, the School Committee is willing to support the Warrant Article 15% allocation of parking spaces to provide e-vehicle and hybrid vehicle access to electric charging stations. This includes parking garages and ground-level parking, but excludes street parking. It is the School Committee's understanding that this warrant article does not require retrofitting of existing Public Schools of Brookline parking facilities. However, electric vehicle chargers are already present at Coolidge Corner School, and are planned in the Driscoll renovation.

ARTICLE 15

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Warrant Article 15 seeks to remove minimum parking requirements for most commercial store front uses within the Transit Parking Overlay District (TPOD) to be replaced with maximum parking requirements that are equivalent to the current town wide minimum requirements for these same storefront uses. The TPOD encompasses essentially all of North Brookline and significant portions of South Brookline.

The Advisory Committee recommends FAVORABLE ACTION on Article 15.

BACKGROUND:

The TPOD is defined by a zoning map that includes all parcels within 0.5 miles of a Green Line transit stop. The TPOD was adopted in 2016. The purpose of establishing the TPOD was to better align Brookline's residential parking requirements with household vehicle ownership and travel behavior as well as achieving better alignment with historic land use patterns within areas served by public transportation.

DISCUSSION:

Warrant Article 15 changes two separate but related parking requirements for commercial buildings. One part is the elimination of minimum parking requirements and the second part is the setting of maximum parking requirements in place of the existing minimum requirements in the TPOD, using the same number of parking spaces as maximums that were once used as parking requirement minimums.

Minimum Parking Requirements

Petitioners argue that compact, walkable neighborhood commercial areas succeed because of their transit access, shared public parking resources, dense neighborhoods within walking and biking distance, and the juxtaposition of multiple civic, shopping and entertainment destinations. The fact that buildings devoted to store front uses in these areas were built prior to the advent of minimum parking requirements for such uses and, therefore, do not have on-site private parking, contributes to the compact, inviting, pedestrian-friendly commercial areas that we have in the Town.

Requiring a minimum amount of on-site private parking for new commercial projects or for a change of use within our existing storefronts limits economic activity. In addition, meeting such requirements is often not possible or desirable if we wish to maintain our historical and current land use patterns and walkable accessibility. Petitioners also argue that the numerical minimum requirements in the Zoning Bylaw are arbitrary and unreasonable, and that there is no evidentiary basis for continuing them. The Advisory Committee agreed and concluded it was time for these minimum requirements to be

eliminated as proposed in WA15 and did not spend significant time reaching that conclusion.

#### Maximum Parking Requirements

Petitioners also argue that maximum parking standards for businesses in mixed-use, transit-oriented districts make sense because parking in excess of what is actually needed could invite automobile trips that would otherwise be shifted to transit, walking, bicycling, or carpooling. Petitioners further argue that in Brookline, the current town wide minimum parking requirements represent a reasonable set of *maximum* requirements for storefront uses within the TPOD; and, that from a zoning perspective, these requirements have already been deemed to provide adequate parking capacity for businesses located anywhere in Town, including those that lack proximity to Green Line stops or shared parking resources.

Some members of the Advisory Committee believed that removing the parking minimums preserved and protected the street experience, but that a similar beneficial argument was lacking with respect to setting parking maximums. They believed that removing the minimum requirements for storefront uses is a major directional change in our zoning without the unintended consequences inherent in setting maximum parking requirements based upon the questionable replacement of arbitrary minimum requirements with similarly arbitrary maximum requirements, using the same numerical ratios. The unintended consequences include possibly inhibiting needed development in less urban areas of the Town that are not easily accessible by mass transit and walking, such as Route 9, with no clear benefit.

Setting maximum parking requirements would be yet a further directional change in our zoning. While that change may be desirable, some members of the Advisory Committee were of the view that it should be proposed only after a study of what maximum parking ratios make sense for Brookline's unique commercial storefront uses. These members believed that it would be prudent to move incrementally after solid analysis and not to act arbitrarily. Petitioners presented an amended version of WA15 that provided that the Zoning Board of Appeals may grant a special permit to exceed the maximum number of parking spaces allowed.

Advisory Committee voted to accept the Petitioners' amended version of WA15, to remove minimum parking requirements and to replace them with maximum parking requirements, with the possibility of a special permit to exceed the maximum requirement, by a vote of 12-10-1., was finally approved by the Advisory Committee, as follows.

#### RECOMMENDATION:

By a vote of 26-0 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on Article 15 as follows:

Voted: That the Town amend the Zoning By-Law by:

1) Adding the following language to Section 6.02, Paragraph 1, which exclusively affects nonresidential uses:

“e. For storefront uses (which shall include Uses 12 through 14 inclusive, 16 through 18A inclusive, 20, 20A, 20C, 21, 29, 30, 32 through 36A inclusive, 36C, 37 and 44, as listed in **Article IV**) on any lot for which any portion of the lot is within the Transit Parking Overlay District, the parking ratios specified in the table in **6.02, paragraph 1** shall serve as maximum allowable parking ratios. These storefront uses are not subject to the minimum parking space requirements in Section 6.02. The Zoning Board of Appeals may grant a special permit to exceed the maximum number of parking spaces allowed.

2) Changing the final footnote to Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements as follows:

“Section 6.02, paragraphs ~~1.2~~ through 7. contain additional requirements by type of use or by location.

ARTICLE 17

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 17 is a petitioned resolution asking the Select Board to establish a committee to review the open-air parking license process and increase EV Ready parking spots. The committee would be tasked with reporting back to the Select Board on a pilot program to provide incentives to open-air parking license holders to provide EV Ready parking spots. As well as review and provide suggestions to reform and enhance enforcement of the open-air parking license process. Further, it encourages the Town to add charging outlets in Town parking lots to facilitate the charging of battery electric vehicles and plug-in hybrids.

The Select Board was largely supportive of the resolution. Particularly efforts to look at how the Town could encourage increasing EV Ready parking spots. Board members did express hesitancy in providing an incentive program to open-air license holders with no means-testing in place. The Board ultimately determined that they could define the financial parameters necessary for the committee through the charge. Regarding a review of the open-air licensing process and how to make it more effective. The Board felt this was a noble task that should be pursued, but felt that this committee should not discuss this sort of policy discussion in particular. The Board felt that the committee should focus on the recommendations for an incentive program to encourage EV Ready parking spots.

On November 5, 2019, the Board recommended FAVORABLE ACTION, by a vote of four in favor and one abstention, on an amended Warrant Article 17, as follows:

VOTED: That the Town adopt the following resolution:

WHEREAS, according to the 2017 report to Annual Town Meeting of the Electric Vehicle Charging Study Committee, 50% of Brookline properties are rental, not owner-occupied, and residents living in rented dwellings who wish to transition from a fossil-fuel burning vehicle are not in a position to invest in or adapt their home for an Electric Vehicle; and

WHEREAS, although reducing reliance on single-owner vehicles has a number of beneficial effects in addition to reducing greenhouse gas emissions, the electrification of the remaining motorized transport is necessary to meet the goals of the Commonwealth and Brookline's commitments under the Paris agreement; and

WHEREAS, lack of a self-owned parking spot can make charging an electric vehicle logistically difficult, discouraging Town citizens from switching to an emission-free vehicle; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Select Board appoint a committee to study the process of administering open-air parking licenses, with the following goals: (1) to consider a pilot program no later than FY22 to provide incentives, including rebates on acquisition and installation costs, for some open-air parking license holders who provide EV Ready parking spots, as defined in the Massachusetts Building Code, and (2) to consider requiring EV Ready parking spots as a condition of obtaining or renewing some open-air parking licenses.

BE IT FURTHER RESOLVED that the Town endeavor to add multiple charging outlets (possibly including L1 as well as L2) to all Overnight Resident Parking Lots, and establish a program to facilitate their use for overnight charging of battery electric vehicles and plug-in hybrids.

**ROLL CALL VOTE:**

Aye:

Greene

Franco

Heller

Fernandez

Abstention:

Hamilton

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**ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION**

**SUMMARY:**

WA 17 is a Resolution that seeks Town Meeting approval to direct the Select Board to appoint a committee to study the open-air licensing process with three goals: (1) to fund an incentivized pilot program for open-air parking licensees to provide EV Ready parking spots; (2) to reform the license process to make it less burdensome for licensees to comply with the law; and, (3) to better enforce licensing requirements. The Resolution also seeks to encourage the Town to add multiple low-speed (L1) charging outlets to overnight resident parking lots.

The Advisory Committee recommends FAVORABLE ACTION ON THE ARTICLE AS AMENDED. The amended wording is included at the end of the Recommendation

**BACKGROUND:**

At the Special Town Meeting in November 2016 C. Scott Ananian (TMM-10) proposed an amendment to Section 6.04 of the Zoning By-law that would have added a new Section 6.04.15 (Electric Vehicles) requiring that at least 2% of parking spaces, and not less than a single parking space, be equipped for electric vehicle charging, providing a Level 2 or Level 3 charger. The goal of that warrant article was to encourage electric vehicle adoption by residents of Brookline. That 2016 warrant article was referred to the Selectmen's Climate Action Committee for further study. Linda Olson Pehlke (TMM-2) who chaired

the EV Charging Station Study Subcommittee estimated that approximately 5,000 vehicles (about 15% of all registered vehicles) in the Town are “garage orphans,” that is, cars that are parked in spaces not owned or controlled by the vehicle owner.

The current warrant article is an outgrowth of the EV Charging Station Study and was filed in order “to begin addressing the needs of those members of our community who rent or own property without dedicated parking who might otherwise want to invest in purchasing or renting an electric vehicle.”

#### DISCUSSION:

Warrant Article 17 is being submitted by the Transportation & Renewable Energy Working Team, which emerged from the first Select Board’s Sustainability & Climate Action Summit to address the broader goal of reducing greenhouse gas emissions from fossil fuel-powered vehicles. The Commonwealth of MA is committing to having 10% or 300,000 ZEVs (Zero Emission Vehicles) on the road by 2025. There were about 28,000 registered vehicles in Brookline in 2010 according to MAPC data, so 10% of that would be 2,800 EVs. One of the goals of this Warrant Article is to enable “garage orphans” to participate in that 10% state commitment. The Sustainability Working Team town goal is to triple the total number of EVs in Brookline within the next 10 years. EV adoption is especially challenging for people who don’t have access to chargers, and therefore these “garage orphans” are slow adopters of BEVs (battery electric vehicles) and plug-in hybrid cars which run on both battery and fossil fuel.

If it votes in favor of the article, Town Meeting would be urging the Select Board to appoint a study committee to examine the process for administering open-air licenses, so as to encourage the installation of EV chargers throughout the Town through the existing licensing authority. The three areas of study the resolution identifies is: (1) funding a pilot program with incentives for those who have an open-air parking license to provide EV Ready parking spots, (2) reforming the currently burdensome process for acquiring an open-air license, and (3) enforcing the licensing requirements.

According to state law, everyone who rents out a parking space (indoor or outdoor) needs to have a license. There is no minimum – it can be 1-car parking space. According to our zoning by-laws a property owner in a residential zone (S/SC/T/F/M) can have 5 spaces by right – but if money is exchanged for the parking space, a license is required. The largest licensed lot is at 808 Commonwealth Avenue, which has 143 spaces.

The Advisory Committee discussion focused on the two “Resolved” clauses.

#### Resolved Clause 1

The Select Board is the licensing authority in the Town for open-air parking licenses. Given the number of committees that the Select Board needs to appoint and to staff, the many Town staff who are already dealing with EV’s and other environmental issues, and to



enable the Town to move forward with the goals of this article, the Advisory Committee recommends that the words **“or direct their designee(s)”** be added to give the Select Board flexibility. The petitioner was amenable to that additional language.

The first goal of the Resolution is to fund a pilot program with incentives to open-air parking licensees to install EV chargers. Incentives could include rebates on costs incurred with the acquisition and installation of EV chargers, for example. The petitioner estimated that the pilot program would cost the Town approximately \$10,000. Zoe Lynn, Sustainability Program Administrator within the Planning and Community Development Department noted that because Brookline is one of 240 MA Green Communities, the Town is eligible for State grant programs. Since 2011 the Town has received over \$800,000 in State grants for energy conservation measures (e.g., conversion to LED streetlighting). The Town is also eligible for Federal grants and other sources of funding for sustainability initiatives. With the goal of seeking funding in mind, the Advisory Committee recommends that **“no later than FY22”** be added to the wording with the intention of securing funding for the FY22 budget cycle. The petitioner was amenable to that additional language, as well.

The petitioners’ second goal is to simplify the current licensing process which may discourage property owners from seeking an open-air parking license. The current application requirements include an initial Fire Department inspection, yearly license renewals by the Select Board, and a public process that includes notifying people within a certain radius via certified mail about the intention to rent out one or more parking spaces and having a hearing before the Select Board. The EV charging sub-committee estimated that only about 20% of the rental parking spaces are properly licensed. The fee itself is minimal – about \$50/year for 5 parking spots. According to data on the Town’s website, as of 2017 there were 62 open-air licenses in Brookline. Deputy Town Administrator Melissa Goff provided the most recent five-year history of revenues from open-air parking licenses, for a total of \$55,525 (FY15 \$13,600; FY16 \$12,180; FY17 \$10,620; FY18 \$8,205; FY19 \$10,920), or an average of a little over \$11,000 a year.

The third goal is simply to enforce the licensing requirements.

All three of those goals would, according to the lead petitioners, work together to encourage the adoption of Battery Electric Vehicles and Plug-in Hybrid Vehicles by residents of Brookline. The members of the Advisory Committee were divided on that view. In a vote to amend WA17 to remove goals 2 and 3 from the first “Resolved” clause, the Advisory Committee voted 13 in favor, 11 opposed, and two abstentions. A slight majority felt that the primary goal of the warrant article was encapsulated in the pilot program and that by limiting the scope of the study committee to the first goal, the study committee could more effectively focus its energies.

#### Resolved Clause 2

The discussion focused on what level charger should the Town encourage. In the language of the original article, the Town would encourage only low speed chargers. Low speed chargers (Level 1) use standard household outlets (15 amp), which would be especially good for plug-in hybrids which have smaller batteries that could be fully-charged overnight. These are relatively inexpensive charging outlets to install and the study committee could look at the costs, for instance, of installing a regular outlet at every space. It's anticipated that plug-in hybrids will be adopted in greater numbers before battery-only electric vehicles.

Level 2 (220 volt) charging outlets are medium speed which is better for BEVs which have larger batteries and could charge a battery in 4 hours. The current chargers in Town parking lots are 2-headed (2 spots) medium speed chargers.

According to the petitioner, in 2015 the Department of Energy found that Level 2 chargers (4-hour or overnight) cost anywhere from \$600 - \$12,000. In CA the retrofit costs were \$4,000 to \$7,000. In MA the costs are \$700 - \$1200 for new construction, and approximately \$7,000 for retrofits.

The Advisory Committee supports adding language to encourage the installation of both Level 1 and Level 2 chargers to the second "Resolved" clause.

RECOMMENDATION:

By a vote of 24 -1 with 1 abstention, the Advisory Committee recommends  
FAVORABLE ACTION ON THE AMENDED RESOLUTION, as follows:

Resolution regarding Open-Air Parking Licenses and Electric Vehicle Charging

Deletions in ~~strikeout~~, additions in **bold underline**.

To see if the Town will adopt the following Resolution:

WHEREAS, according to the 2017 report to Annual Town Meeting of the Electric Vehicle Charging Study Committee, 50% of Brookline properties are rental, not owner-occupied, and residents living in rented dwellings who wish to transition from a fossil-fuel burning vehicle are not in a position to invest in or adapt their home for an Electric Vehicle; and

WHEREAS, although reducing reliance on single-owner vehicles has a number of beneficial effects in addition to reducing greenhouse gas emissions, the electrification of the remaining motorized transport is necessary to meet the goals of the Commonwealth and Brookline's commitments under the Paris agreement; and

WHEREAS, lack of a self-owned parking spot can make charging an electric vehicle logistically difficult, discouraging Town citizens from switching to an emission-free vehicle; and

WHEREAS, the current open-air parking license process administered by the Select Board is cumbersome, and enforcement against those renting out open-air parking spots without a license is practically-speaking non-existent;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Select Board appoint a committee or direct their designee(s) to study the process of administering open-air parking licenses, with the following goals: (1) to fund a pilot program no later than FY22 to provide incentives, including rebates on acquisition and installation costs, for open-air parking license holders who provide EV Ready parking spots, as defined in Section C405.10 of 780 CMR 13, the Massachusetts Building Code. ; ~~(2) to reform the license process to make it less burdensome to comply with the law in good faith and acquire and renew an open-air parking license, and (3) to more effectively enforce licensing requirements.~~

BE IT FURTHER RESOLVED that the Town endeavor to add multiple ~~low-speed~~ charging outlets (possibly including L1 as well as L2) to all Overnight Resident Parking Lots and establish a program to facilitate their use for overnight charging of battery electric vehicles and plug-in hybrids.

ARTICLE 20

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

WA 20 would change the Zoning By-Law to permit the construction of Micro-Unit Dwellings by special permit from the Zoning Board of Appeals within the G-1.75 Coolidge Corner General Business District. Micro Unit residences are defined as living spaces no larger than 500 square feet of gross floor area. A Micro Unit Dwelling would be a building in which at least 75 percent of residential units would be Micro Units. Other space would be devoted to commons areas. No parking spaces would be required. Such a building would be subject to other current Zoning By-Laws in G-1.75 (CC), including a requirement of retail units on the ground floor on major commercial streets and that 15 percent of the units must be affordable. An initial proposal by the petitioner sought special considerations for Micro-Unit buildings, including exceptions for height, set-back, and FAR regulations based on Public Benefit Incentives. Hearing objections from member of the public and from several government bodies that held hearings on WA 20, the petitioner introduced a revised Warrant Article that made no claim for special zoning relief. The discussion below and the Advisory Committee’s vote are reflective of that revised version.

The Advisory Committee recommends FAVORABLE ACTION on Article 15.

BACKGROUND:

Micro Unit residences are defined as living spaces no larger than 500 square feet of gross floor area. A Micro Unit Dwelling would be a building in which at least 75 percent of residential units would be Micro Units. Other space would be devoted to commons areas. No parking spaces would be required. Such a building would be subject to other current Zoning By-Laws in G-1.75 (CC), including a requirement of retail units on the ground floor on major commercial streets and that 15 percent of the units must be affordable.

An initial proposal by the petitioner sought special considerations for Micro-Unit buildings, including exceptions for height, set-back, and FAR regulations based on Public Benefit Incentives. Hearing objections from member of the public and from several government bodies that held hearings on WA 20, the petitioner introduced a revised Warrant Article that made no claim for special zoning relief. The discussion below and the Advisory Committee’s vote are reflective of that revised version.

DISCUSSION:

Micro Units had been permitted under Brookline zoning prior to the Fall of 2016, at which time Town Meeting approved the Emerald Isle Special Overlay District (EISD), which comprises eight adjoining commercial properties between Brookline Avenue and River Road on Brookline’s eastern border, and included special provisions for the development of Micro Unit Dwellings. Town authorities have since ruled that the particular language

used in deliberately approving Micro Units in the EISD precluded—perhaps inadvertently—the development of similar units anywhere else in Brookline. No Micro Unit Dwellings have to date been developed in the Town, including in the EISD, though some individual Micro Units, as defined by the size noted in the proposed by-law, do exist.

Views of Micro Unit buildings voiced at the Advisory Committee meeting were generally positive, with such development seen as a way to bring elements of housing diversity to the Town. It was also noted that the addition of new (carless) residents to Coolidge Corner would benefit local businesses.

Issues that emerged had to do with the following concerns:

- 1) That the opening of the Coolidge Corner Business District to Micro Unit development could invite additional projects that would stress the urban ecology or character of Coolidge Corner, particularly given the number of other construction projects that are currently being proposed for, or developed in, the District.
- 2) That prior to the approval of by-laws relating to the development of any Micro Unit Dwelling, it would be prudent for the Town to consider the benefits and challenges such housing would present, both in Coolidge Corner and in other suitable—i.e., urbanized areas of the Town served by public transportation—and to develop a set of zoning standards for the Town generally and each relevant area if appropriate.
- 3) That Micro Unit Dwellings would attract undergraduate students, effectively becoming dormitories. The petitioner noted in response to this concern that he does not rent to undergraduate students in his other properties in Brookline. It's also worth noting that residence hall fees charged by Boston College and Boston University run well below the petitioner's projected rent of about \$2,500 per month. Notwithstanding the petitioner's rental policies, the revised By-Law would apply to all future Micro Unit Dwellings in the District under consideration, whoever owned them, and whatever their commercial practices.

The Advisory Committee concluded that Micro Unit residences seemed to make sense in Coolidge Corner; that the Coolidge Corner Business District was sufficiently buttressed by zoning regulations to keep it from being “over-run” by Micro Unit projects; and that residents of Micro Unit Dwellings would likely support Coolidge Corner businesses. It was also noted that experience with the Webster Street project that is the *raison d’etre* for Article 20 could provide the Town with knowledge that would aid in the development, if required, of further policies on Micro Unit development in Coolidge Corner and elsewhere.

**RECOMMENDATION:**

By a vote of 18-3 with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on 20 as published on Pages 20-6 and 20-7 pf the November 19, Special Town Meeting Combined Reports.

ARTICLE 21

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 21 is a petitioned article asking the Town to create a new by-law that would prohibit the installation of fossil fuel infrastructure in new buildings and gut/significant rehabilitation projects in Brookline. For these types of construction projects, installing gas or oil piping would be prohibited. This will have the effect of preventing the installation of new major appliances (e.g., boilers, furnaces, clothes dryers) or other systems that require on-site combustion of fossil fuels (e.g., natural gas or oil) for these types of projects. Specific exemptions are outlined in the By-Law, and construction project can also seek a waiver from a to-be-created Sustainability Review Board.

Specific exemptions in the By-Law include exemptions for piping required to fuel backup electrical generators, cooking and related appliances, centralized hot water systems in buildings with floor areas of at least 10,000 square feet (provided that the Engineer of Record certifies that no commercially available electric hot water heater exists), any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility, among other exemptions.

The Sustainability Review Board will be a three or more member Town Board established and appointed by the Select Board with expertise in affordable housing; commercial development; high-performance sustainable design; architecture; mechanical, electrical, and plumbing engineering; or other technical areas as determined by the Select Board.

The effective date will be the later of (1) January 1, 2021, (2) 5 months after written approval is received from the Attorney General's Office, or (3) the date upon which the Sustainability Review Board and its procedures have been established.

Significant consensus has been built between various boards, committees, commissions, community stakeholders and co-petitioners during the vetting of this Article. The Board appreciates the efforts of the petitioners and the Advisory Committee to craft language that can be supported by a wide range of stakeholders.

The Select Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

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ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

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SUMMARY:

Article 21 is intended to be a major step towards achieving Brookline's goal of reducing its carbon emissions to zero by 2050. It would, with limited exemptions, prohibit the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) in new construction and so called "Significant Rehabilitations".

The Advisory Committee recommends FAVORABLE ACTION on Article 21 in the form presented on November 5, 2019.

*As of November 11, the petitioners were considering revisions to the article that have not been reviewed by the Advisory Committee. No recommendation should be inferred for any version submitted subsequent to the November 5, 2019 vote.*

BACKGROUND:

Article 21 is sponsored by a team of petitioners which include architects, lawyers, members of various advocacy groups including Mothers Out Front and the Greenspace Alliance plus three members of the Select Board.

The proposal is intended to support the Brookline Climate Action Plan which states the Town's intention to reducing its greenhouse emissions to zero by 2050. One strategy is to begin requiring the complete electrification of new buildings and buildings undergoing significant renovations. While the short term greenhouse emissions effects of this strategy is dependent on the fuels used to generate electricity, it is Massachusetts state policy to increase the percentage of electricity generated from renewable sources over time. Additionally, Brookline sponsors a community aggregation program in which the default choice has a higher percentage of renewable sources than the Eversource default. Plus Town electric customers can opt up to the Brookline Green Option which has 100% renewable source. Lastly, individual electricity consumers can make additional renewable investments on their own using strategies such as installation of onsite solar panels or participation in community solar.

The bylaw would prohibit installation of new fossil fuel piping in new buildings and "significant rehabilitation" of existing buildings. The original proposal had limited exemptions for (1) portable appliances for outdoor cooking and heating (ie., propane barbeque grills), (2) backup electrical generators and (3) the Waldo Durgin project (since that was the subject of a separate negotiation with the Town.) The original proposed effective date was June 1, 2020, but that has been revised to the later of:

1. January 1, 2021
2. 5 months after the Attorney General approves the bylaw
3. The date upon which the SRB is appointed by the Select Board and after a public hearing publishes its procedures and decision criteria.

The proposal does not affect existing piping, boilers, stoves or water heaters. However, in a covered project, the bylaw as originally proposed would prohibit new piping to accommodate relocating any existing appliances. For example, in a covered “gut” renovation project (called a “Significant Rehabilitation” in the bylaw) that includes a kitchen renovation, the homeowner would not be able to install pipes to relocate a gas stove to the other side of the room or to even move it a few inches.

Under the version of Article 21 adopted by the Advisory Committee and accepted by the petitioners, proposal, residential cooking appliances such as ranges, ovens and stovetops would not be covered even in a “gut” renovation, thus allowing renovated kitchens to continue to have gas appliances, no matter where in the kitchen the homeowner wishes to place them.

The petitioners, the Planning and Community Development Department plus various Town Boards and commissions have sponsored or participated in a number of “community feedback” sessions in addition to the normal vetting hearings that take place for Town Meeting warrant articles. As a result of the feedback prior to the Planning and Regulation Subcommittee’s public hearing, the petitioners added additional exemptions for (1) restaurant kitchens, (2) large central hot water systems (with an engineer’s statement) and (3) added a waiver process where it would be otherwise impractical or financially infeasible to go with all electric systems.

Additionally, with input from the Building Commissioner, they have attempted to clarify the definition of significant rehabilitation to generally correspond to a “Level 3” renovation as defined in the Building Code for commercial buildings. Exemptions proposed by others which the petitioners did not accept were (1) an exemption for all cooking, (2) a broad exemption for commercial buildings; (3) including only single family homes, and (4) including only new construction.

#### DISCUSSION:

Electrification of our infrastructure is one strategy to reduce and eventually eliminate our reliance on fossil fuels. Currently, fossil fuels (mainly natural gas in New England) are used to generate a percentage of our electricity, which percentage will decrease over time as more renewable generating sources come on line. No one on the Advisory Committee took issue with the need to reduce our carbon emissions and the electrification strategy. This report will now focus on the details of the proposed bylaw and the practical aspects of the proposal.

When the bylaw was originally submitted, the petitioners listed two exclusions; outdoor cooking and heating appliances and the Waldo-Durgin project. Waldo-Durgin was excluded because it was the subject of a Memorandum of Understanding with the Town which specifically addressed how the approaches to energy efficiency are to be handled



including involving the Town's Sustainability Program Administrator during the design phase.

Note that the bylaw only applies to new construction and so called gut renovations. No one is required to replace any existing gas appliances. Even in a gut renovation, a gas appliance can be replaced; but no new piping can be installed unless there is an exemption. But, in order for this to work, we need to have a sense of reality as to what can be replaced by electric appliances.

#### Heating and Cooling

In New England, space heating consumes the most energy in buildings. In Brookline, the predominant fuel source is natural gas and fuel oil. Many factors contribute to the amount of energy consumed including the efficiency of the heating appliance (furnace, boiler, heat pump, etc.) and how well the building envelope is insulated and sealed. This bylaw only addresses the fuel source, which is only one piece of the equation.

Typically, we think of electric heat as utilizing baseboard resistance heaters, which are cheap to install but very expensive to operate. The preferred electric heat sources now are either ground source or air source heat pumps. Heat pumps can be used for both air conditioning in summer and heating in winter. In winter, the refrigerant absorbs heat from the air outside (or the ground) and uses it to warm the space. Ground source heat pumps use heat drawn from geothermal wells to facilitate heat transfer. Generally, heat pumps are extremely efficient to operate (however as the temperature drops, heat pumps become less efficient and there is a point where they stop working though with today's heat pump they will work to as low as -25F degrees. The Planning and Regulation Subcommittee heard testimony that the industry is moving towards heat pumps as the preferred space heating and cooling technology and it works well for most applications.

Given the variety of commercial building types and their uses, blanket claims of practicality and financial feasibility of the technology for all uses are difficult to substantiate. The Planning and Regulation Subcommittee heard testimony that at least laboratories and certain types of medical offices have higher air circulation and replacement requirements, which heat pumps may not always be able to handle. We also need to balance the Town's critical financial need to be competitive with other communities with respect to promoting development of buildings devoted to medicine and science with its overall goal of reducing greenhouse emissions. The Town is in a unique position to leverage its close proximity to one of the world's great medical/science complexes.

The Advisory Committee therefore proposed, and the petitioner accepted, an exemption for such uses given the difficulty of quantifying the requirements to a degree sufficient to write into a bylaw in the timeframe of this Town Meeting. The failure to have a lab/medical exemption could work to divert such development to other close-by communities.

#### Domestic Hot Water

For residential and smaller commercial uses, there are practical alternatives to a gas hot water heater. These include traditional resistance and the newer technology heat pump hot water heaters.

For large central hot water systems, there are currently no alternates to the traditional gas hot water heater. Many large buildings are moving away from central hot water to a distributed hot water system, (the water is heated just prior to the using fixture or for a floor or unit in a building.), For systems of this type, there are electric alternatives.

The proposed bylaw does not mandate moving away from a central hot water system, and it implicitly recognizes the lack of alternatives. However, if an alternative becomes available, there is an exemption in the proposal if the alternative is more than 150% of the capital or operating cost of a conventional gas water heater as certified by an engineer. While at first glance a 150% cost differential seems high, remember that the requirement is only in effect for new construction or a “significant rehabilitation,” where hot water will be a very small fraction of the total project cost.

### Cooking

Cooking is where residents have the most interaction with natural gas. The bylaw, as originally submitted would have prohibited new fossil fuel infrastructure for cooking appliances.

There are two electric alternatives to the traditional gas range and stove top; the standard resistance electric range and the induction electric stove top. While resistance stoves work, they deliver a different, less controllable cooking experience. Induction stoves deliver a controlled cooking experience similar to natural gas but require cookware to be made of a magnetic based material such as cast iron or magnetic stainless steel. Aluminum or copper cookware does not work.

The subcommittee received an email and heard testimony from Dr. Jeffrey Macklis, Professor of Stem Cell and Regenerative Biology, Harvard University, and Professor of Neurology [Neuroscience], Harvard Medical School. Dr. Macklis researched induction stoves when he was considering purchasing one.

“In brief, I found that the EU regulations and analyses show that a single burner on is reasonably safe for an adult user if the pan is of “appropriate”-correct size (completely covering the burner) and is perfectly centered with precision, but that this safety disappears for a pregnant abdomen with fetal head (developing brain) closer than 1 foot away, or a small child whose head (developing brain) would get closer than 1 foot away from the front of a burner. The EU agencies all point out that pregnancy and small children position developing brains directly at the least safe position– adjacent to the cooktop and at its level. That is because the main risk is within a foot or so (30 cm) of a burner, and electromagnetic field strength from the induction cooktop is limited by EU/Swiss/now US recommendation to approximately 6 uT (microTesla). While essentially all modern residential cooktops meet this standard for a single burner on with an optimally sized pot/pan that is

perfectly centered, they fail under “real world” scenarios. Unfortunately exposure with a differently sized pot/pan or one that is not optimally centered is often found to be ~5X higher (>30 uT!) than the regulatory agencies use as their acceptable limit! This even exceeds adult “occupational limits” set by the agencies. If more than one burner is on (e.g. for a normal meal or worst at a Thanksgiving dinner), the leakage around centered or uncentered pans is additive, though some will be further away than others.”

Dr. Jesse Gray, disagreed with Dr. Macklis’s assertions as follows:

“The concern raised here is a hypothetical one, since induction cooktops have been in widespread global use for decades without any demonstrated adverse health effects. No health or consumer protection authorities have banned induction cooktops for health or any other reasons, and there isn’t a single peer-reviewed epidemiological study implicating induction cooking in any negative health impact. The petitioners brought this proposed by-law forward for climate reasons, not health reasons. However, in considering health, the competing technologies must be weighed against each other, since all technology has risks, and people are going to cook with one technology or another. As it stands, there is more substantial evidence about the dangers of gas cooking than there is about induction cooking. Gas cooking kills about 8,000 people every year in the United States due to fire. There are also well-documented health impacts from combustion byproducts of gas cooking, including asthma, that should be weighed against any hypothetical health impacts of induction cooking. These impacts of gas cooking are supported by numerous peer-reviewed epidemiological studies, unlike the speculative induction concerns.”

Given (1) the competing health arguments, (2) the strong feelings by some about gas as a cooking energy source and (3) the unintended effect of prohibiting even small relocations of gas appliances in some kitchen renovations, the Advisory Committee was not prepared to support a complete ban of gas cooking appliances in projects subject to the bylaw at this time, and the petitioner accepted a cooking appliance exemption that includes residential properties.

#### Unsafe or Dangerous Condition Exemption

As originally submitted, the bylaw would not have permitted the repair of unsafe or dangerous existing gas infrastructure. An exemption has been added and agreed to by the petitioners.

#### Waivers and Appeals

This is a new area with developing technology and an all-electric infrastructure may not be practical or financially feasible in all situations not explicitly exempted by the bylaw. The Advisory Committee proposal creates a waiver and appeal process for these situations. The Planning and Regulation Subcommittee heard concerns from the Economic Development Advisory Board, with respect to commercial development, the Housing

Advisory Board with respect to affordable housing and the Brookline Housing Authority with respect to their properties. For affordable housing in particular, capital funds may be limited to make investing in systems with lower operating costs in the long run difficult.

For all these Boards, a robust and effective waiver and appeal process is an essential component in coming to support the bylaw. The proposal establishes a “Sustainability Review Board” (SRB) to hear and decide waivers and appeals. The bylaw specifies that members shall possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering plus other technical areas as determined by the Select Board. The bylaw sets a general standard of review but requires the SRB to adopt procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects. And one of the prongs for the effective date of the bylaw is the establishment of SRB and adopting procedures and criteria of review.

#### Other Municipal Ordinances

The movement surrounding mandating fossil fuel free infrastructures by municipal ordinance is a new one with the first such ordinance being passed in Berkley, CA on July 16, 2019. To the best of our knowledge, in the United States, only three other municipalities, all located in California, have passed similar ordinances since then. Other municipalities are considering this kind of legislation. All enacted ordinances, to date, cover only new construction and have various exemptions. They are summarized in the chart below:

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Brookline, MA (Proposed)	Article 21	Bans new fossil fuel infrastructure in all new construction and “Significant Rehabilitation(s).”	1. All cooking appliances 2. Backup generators 3. Outdoor cooking and heating 4. Large central hot water heaters 5. Waldo Durgin 6. Labs and certain medical offices 7. Repair unsafe conditions 8. Waivers if “financially infeasible or impractical”	Yes
Berkley CA	Ordinance No. 7.672–N.S.	The Berkley ordinance prohibits natural gas in <b>new</b> buildings. The ordinance is being rolled out gradually as the California Energy Commission (CEC) models different types of all-electric buildings. Currently, the ordinance bans installation of natural gas lines in low-rise residential buildings. As the CEC completes its modeling, the ordinance will expand to include additional building types.	Exemptions possible when a developer can demonstrate that all-electric isn't "physically feasible". There is also a general "public interest exemption" for cases where gas might be in the public interest to install vs. electric.	Eventually

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
San Luis Obispo, CA	Clean Energy Choice Program	The Clean Energy Choice Program "encourages" all-electric <b>new</b> buildings. "Unlike some cities that are banning natural gas entirely, the Clean Energy Choice Program will provide options to people who want to develop new buildings with natural gas. New projects wishing to use natural gas will be required to build more efficient and higher performing buildings and offset gas use by performing retrofits on existing buildings or by paying an in-lieu fee that will be used for the same purpose.	Commercial kitchens are exempt. Various exemptions for "public health and safety" (e.g. hospitals) and an exemption for manufacturing that requires gas (see page 39 of ordinance for full list). The Clean Energy Choice Program also includes a "Public Interest Exemption", which allows the permitting authority to exempt projects should unexpected or unintended effects of the program arise.	Yes
Windsor, CA	Ordinance Adopting All-Electric Reach Code	All-electric requirement for <b>new</b> single-family homes, detached accessory dwelling units, and multi-family buildings up to three stories (also referred to as "low-rise residential")		No
San Jose, CA	Building Reach Code for New Construction	The passed ordinance will ban natural gas in the construction of <b>new</b> accessory dwelling units, new single family homes and new low rise and multifamily buildings.		Yes

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Menlo Park, CA	Ordinance No. 1057	Heating systems in all <b>new</b> homes and buildings in the city must run on electricity, and all new commercial, office and industrial buildings, as well as high-rise residences, must rely entirely on electricity. Although new one- and two-story homes will be allowed to have natural gas stoves, they must be built “electric ready” with the proper wiring to enable all-electric operation in the future.	Life sciences buildings and public emergency operations centers (e.g. fire stations) need to apply for an exemption, but are eligible. For single family and three stories or less multifamily: Natural gas can still be used for stoves, fireplaces or other appliances if desired (but rewiring for electric appliances is required where natural gas appliances are used.). Nonresidential kitchens, such as for-profit restaurants and cafeterias, may appeal under certain conditions to an appointed body designated by the City Council if they want to use natural gas stoves. The advisory body’s decision can be appealed to City Council.	Yes

What renovations should be covered in addition to new construction?

Other than the Brookline bylaw, all of the bylaws referenced in the chart above cover only new construction. With new construction, the entire project can be planned and designed to maximize energy conservation and take into account the design requirements of all electric systems. Renovations present a set of complications since an all electric system will need to be retrofitted into an existing building envelope which was, in all likelihood, designed around a fossil fuel infrastructure. This only begins to make sense if all the walls are open which would be the case in a so called “gut” renovation. The Advisory Committee worked with the Building Commissioner and other staff in coming up with a legal definition that is understandable, relatively easy to enforce and, hopefully, minimizes the

unintended consequence of creating a trigger where walls are not open to the degree necessary to perform a deep energy efficiency retrofit.

For buildings subject to the commercial building code (residential buildings with 3 or more families plus commercial buildings), there is already a well-defined trigger called a Level 3 renovation when triggered, requires a high degree of code compliance. Building professionals plus the Town Building Department are familiar with this trigger and it is easily computed. For those properties, it makes sense to incorporate a Level 3 renovation into the definition of “Significant Rehabilitation.”

In the residential building code, there is no parallel concept to a Level 3 commercial renovation. Our intent is to use the existing definition of Gross Floor Ratio in the zoning bylaw as the denominator to compute the percentage to define a “Significant Rehabilitation.” Since we do not want to have an inadvertent trigger, we are opting to set the trigger percentage to a very high 75%. As we gain experience with the bylaw and gather data on how it is working, the percentage trigger can be adjusted at a future Town Meeting, if appropriate.

#### Legal issues

In Massachusetts, municipal ordinances cannot supersede the state building code which covers plumbing and other aspects of the building envelope and components. This proposed bylaw is constructed in way that attempts not to supersede the code but it is breaking new ground. As such, according to Associate Town Counsel Jonathan Simpson, there is no history or case law that directly speaks to the legal analysis of whether this bylaw is preempted. However, Mr. Simpson has cautioned that there could be several statutes that may preempt what this bylaw is attempting to do. The Office of the Attorney General (OAG), which reviews bylaws passed at Town Meeting, will not issue preliminary opinions, so the only way to know for sure whether OAG will approve a By-Law such as this, is to pass it at Town Meeting and submit it for OAG review. Even if we receive a rejection from the OAG, we will have gained some clarity as to how to approach this issue in the future. Note that even if the Attorney General approves the bylaw, it would still be subject to challenge by other parties.

#### Effective Date

As noted above, sufficient lead time for homeowners and developers has been provided to adjust their plans to comply with this bylaw.

#### RECOMMENDATION:

By a vote of 21-4 with four abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 21 as follows:

Voted: That the Town amend the General By-Laws by adopting a new article 8.39 entitled “Prohibition on New Fossil Fuel Infrastructure in Major Construction” as set forth below.



#### 8.39.1 Purpose

This By-Law is adopted by the Town of Brookline, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health and welfare of the inhabitants of the town from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

#### 8.39.2 Definitions

“New Building” is defined as a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the Effective Date.

“On-Site Fossil Fuel Infrastructure” is defined as fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of gas meter).

“Significant Rehabilitation” is defined as a renovation project associated with a valid building permit application on or after the Effective Date of this article that:

- (1) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 51.00, Massachusetts Residential Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 75% of the Gross Floor Area as defined in the Brookline Zoning By-Law;
- (2) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 34, the Massachusetts State Basic/Commercial Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 50% of the building floor area prior to the project, as defined by the Massachusetts Building Code.

“Sustainability Review Board” (SRB) is defined as a Town Board established and appointed by the Select Board whose members shall, to the extent possible, possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering and other technical areas as determined by the Select Board. The SRB shall have at least three members with three year staggered terms. The mission charge of the SRB shall be set by the Select Board. The mission charge shall be broad enough to perform the requirements of Sections 8.39.5 and 8.39.6.

“Work Area” is defined as the portions of a building affected by renovations for the reconfiguration of space and/or building systems, as indicated in the drawings associated with a building permit application. Areas consisting of only repairs, refinishing, and/or incidental work are excluded from the Work Area.

#### 8.39.3 Applicability

The requirements of this article shall apply to all permit applications for New Buildings and Significant Rehabilitations proposed to be located in whole or in part within the Town as follows.

- A. The requirements of this article shall not apply to utility service piping connecting the grid to a meter, or to a gas meter itself.
- B. The requirements of this article shall not apply to piping required to fuel backup electrical generators.
- C. The requirements of this article shall not apply to piping required for cooking appliances and related appliances.
- D. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating.
- E. The requirements of this article shall not apply to the piping required to produce potable or domestic hot water from centralized hot water systems in buildings with floor areas of at least 10,000 square feet, provided that the Engineer of Record certifies that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation or operational costs, compared to a conventional fossil-fuel hot water system.
- F. So long as new fossil fuel piping is not installed, the requirements of this article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping.
- G. The requirements of this article shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in Section 5.06.4.k of the Zoning By-Law.
- H. The requirements of this article shall not apply to research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility.
- I. The requirements of this Article shall not apply to repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

#### 8.39.4 Effective Date and Enforcement

Upon the Effective Date, no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of new On-Site Fossil Fuel Infrastructure, except as otherwise provided in Sections 8.39.3, 8.39.5, and 8.39.6. As used herein, “Effective Date” shall be the later of (1) January 1, 2021, (2) 5 months after written approval of Article 8.39 is received from the Attorney General’s

Office, or (3) the date upon which the SRB has been appointed and, after a public hearing, has adopted procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects under Sections 8.39.5 and 8.39.6.

#### 8.39.5 Waivers

A waiver from Article 8.39 may be sought from the SRB on the grounds of financial infeasibility supported by a detailed cost comparison, inclusive of available rebates and credits, or impracticality of implementation. A waiver request may be made at any time and may be based upon submission of conceptual plans. The SRB shall apply its criteria to evaluate whether particular portions of a project are financially infeasible or impractical to implement under the requirements of Section 8.39 and shall issue waivers narrowly for those portions, where appropriate, rather than for an entire project.

Particular consideration for waivers will be given to projects sponsored by the Brookline Housing Authority (BHA), given the BHA's limited sources of capital funds.

#### 8.39.6 Appeals

An appeal may be sought from the SRB following a denial of a building permit on the grounds that Article 8.39 is not applicable to a project pursuant to Section 8.39.3. Any appeal shall be supported by detailed information documenting the basis of the appeal.

## ARTICLE 21

### **PETITIONER'S SUPPLEMENTAL EXPLANATION**

#### **Summary**

This by-law will prohibit installation of fossil fuel piping in new buildings and in major renovation of existing buildings. Consequently, this policy will require heat, hot water, and appliances that are installed during new construction and major renovations to be all-electric. This by-law is intended to facilitate a practical transition to fossil fuel free buildings, and it thus provides for some exemptions including for fuel piping for backup generators, for cooking, and for central domestic hot water systems in large buildings.

#### **Rationale**

We are facing a global climate crisis. This climate crisis directly affects Brookline residents and businesses. Massachusetts is one of the fastest-warming states in the country. We have seen a rapid increase in extreme heat events that threaten the health of our children, our seniors, and those who need to work outside, not to mention our fragile ecosystem's plants and wildlife. Rising seas and increased flooding threaten Boston and coastal communities. Public health risks include an increase in heat-related illnesses and deaths, as well as outbreaks of insect-borne and waterborne diseases. As natural ecosystems change or collapse, Massachusetts farmers, fishermen, and residents will suffer.

In its Climate Action Plan, and consistent with state direction in the Green Communities Act, Brookline has committed to reducing its carbon emissions to zero by 2050. More recently, the United Nations International Panel of Climate Change announced in 2018 that we must reduce our carbon emissions by 50% by the year 2030 in order to avoid the most catastrophic effects of climate change. Buildings account for 60-70% of Brookline's emissions. Every new building constructed with fossil fuel infrastructure makes our emissions goal harder to achieve by lighting a new fire that will burn, on and off, for thirty years or more. To meet our climate goal, each of these fires will need to be put out through the retrofitting of buildings. It is unfair to the next generation to continue to install infrastructure that we already know will need to be replaced in a very short time. This by-law is an essential step if we are to have any hope of reaching Brookline's climate goals of zero emissions by 2050.

Eliminating fossil fuel infrastructure during new construction or major renovations is by far the most cost-effective way to decarbonize. All-electric construction is practical and feasible now. Numerous all-electric buildings have been built recently in Massachusetts (see Appendix B), demonstrating the feasibility and practicality of all-electric construction. Assuming that 0.5% of the building stock in Brookline is rebuilt or significantly renovated per year, this by-law would decarbonize 15% of our buildings by 2050.

All-electric buildings can operate immediately with zero emissions by purchasing 100% renewable electricity via programs such as Brookline Green Electricity. Even electric buildings using the default New England electrical grid mix are greener now than gas buildings, and they become greener every year as the electrical grid incorporates more and more renewable electricity generation, with a state-mandated minimum of 60% renewable energy by 2050.

*Figure 1: Comparing the Greenhouse Gas Emissions of an All-Electric House with Air Source Heat Pumps to a House with Natural Gas Heat and Hot Water*

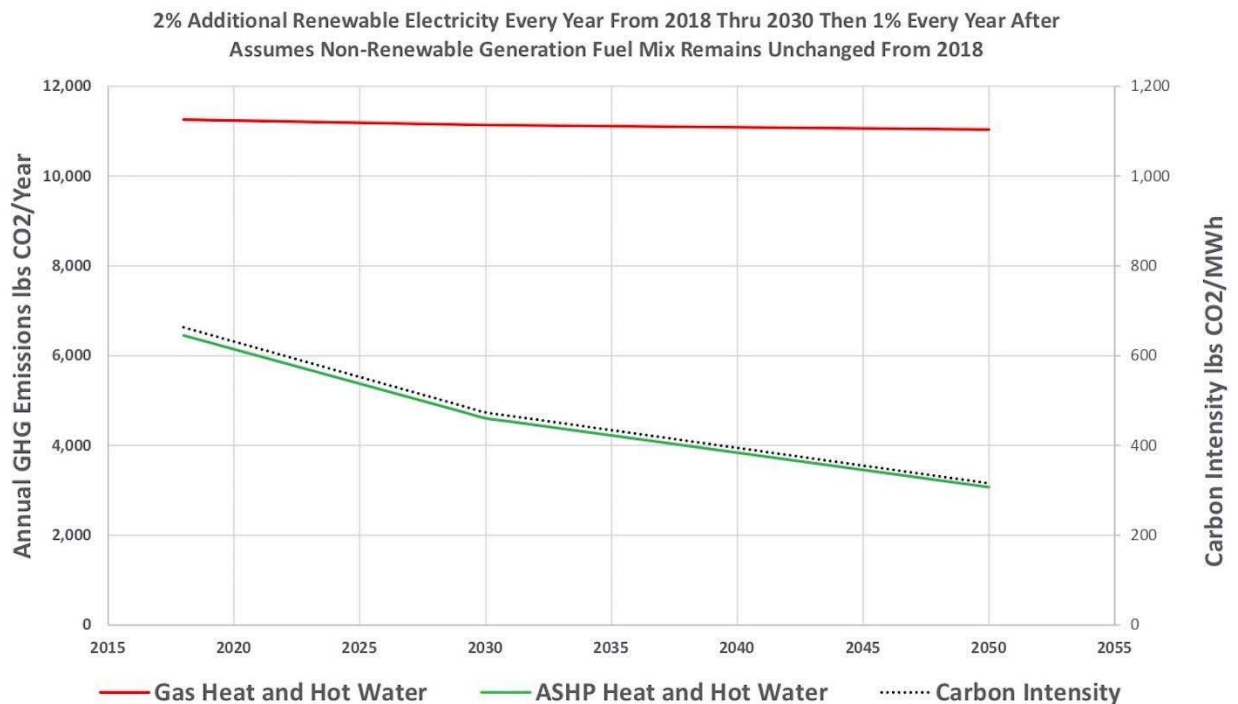


Figure 1 compares projected carbon emissions for a single-family home built in Massachusetts using air-source heat pumps to provide electric heat and hot water with a similar home that uses gas heat and gas hot water. This projection assumes the home uses the default electricity provider, which will include more renewable energy over time.

### All-Electric Building Technology

Cost-effective and energy-efficient systems exist today for heating and cooling, domestic hot water, and other appliances for most buildings and applications.

*Space heating and cooling.* Heat pumps are air conditioners that can operate in reverse. Even in cold weather, they extract heat from outside air and move it into the building. Because heat pumps move heat rather than generating it, they are very efficient. Dramatic improvements in heat pump technology and building envelope technology now make it practical and cost-effective to heat new buildings with electricity in our climate.'

Most new Brookline buildings have air conditioning. In buildings with both heating and air-conditioning, heat pumps save money in two ways. First, only a single system needs to be purchased and installed (rather than separate air conditioning and heating systems). Second, heat pumps are more efficient than air conditioners and save on electricity costs.

*Hot water heating.* An electric heat pump hot water heater can be purchased from local home improvement stores and costs about the same to buy and operate as a gas-fired hot water heater. The costs of gas, electric resistance, and electric heat pump hot water heaters are described in Appendix A.

*Other Appliances.* Clothes dryers, ovens, and cooktops are also available in all-electric options. Many buildings already use electric resistance dryers. An alternative option, less expensive to operate, is the heat pump electric dryer. Compared to gas or most electric resistance dryers, heat pump dryers have the advantage of not requiring any outside venting. In the kitchen, electric or induction cooktops and electric ovens provide alternatives to gas.

### **All-Electric Building Costs**

*Construction Costs:* All-electric construction is, in most cases, highly practical and essentially cost neutral. For example, one model commissioned for MassSave estimates a \$754 construction cost premium for a 2,500 sq. ft. all-electric single-family home, compared to the same home fitted with the most efficient gas heat and hot water systems and electric central air conditioning. This premium is less than a 0.1% increase in cost for a similar new home in Brookline, and it does not include available incentives that result in a net savings on construction of the all-electric home.

*Operating Costs:* Building operation costs vary widely depending on building type, whether a building is new or retrofitted, whether a ground source or air source heat pump is used, whether solar is installed, the extent of air sealing and insulation, and other variables. To cite one example, buildings that are air-sealed and insulated to Passive House standards can use less than 10% of the energy of many existing buildings, a difference in cost that is far greater than the differential cost of fuels.

A relevant operating cost comparison comes from the same MassSave model cited above. Under this model, operation of a brand-new all-electric home in Massachusetts would be slightly more expensive than that of a brand-new gas home (by \$41 per month). However, this \$41 per month cost premium must be put into context. First, this cost increase is less than 1% of expected monthly costs on a newly built 2,500 sq. ft. Brookline home, including utilities, mortgage, and real estate tax payments. Second, when new all-electric buildings are compared with older existing buildings, in which most of us in Brookline live, the new all-electric buildings are significantly less expensive to operate than the existing gas buildings, due to the far better air sealing and insulation required in new buildings.

## **Appendix A -- Frequently Asked Questions**

Q: Will this measure be effective (even if adopted beyond Brookline), or will the consequence simply be that more fossil fuels will be consumed in electricity generation?

If the occupant of a new all-electric building chooses to buy 100% renewable electricity, that all-electric building will operate with low-carbon energy from the moment it begins to operate, which is a dramatic reduction in emissions.

Assuming the occupant relies on the standard grid mix, a new all-electric building built today would have lower overall emissions than an otherwise identical building with gas heat and appliances in the first year of operation (see Figure 1 above). These emissions savings will increase each additional year, as the grid greens through an existing statewide legislative mandate that requires a minimum 60% carbon-free grid by 2050. This grid greening is likely to be accelerated further at the state level and through Brookline's Green Electricity program. Thus, the emissions savings are very large compared to a building that burned natural gas over the course of those 31 years.

Q: In light of the heat wave and the power outages in NYC, if we go all electric what happens to the chance of overloading of the grid? Will there be more power outages as a result?

Electrical demand is currently declining in New England due to solar panels on building roofs and gains in energy efficiency. There are declines in both annual and peak demand, and these declines are expected to continue. In addition, our electrical grid is currently adding significant renewable generation -- utility-scale wind and solar.

The proposed bylaw policy affects too few buildings too slowly to affect the electrical grid significantly. This new building policy will affect such a small fraction of buildings on the grid (~1% turnover in any one year, even if adopted across the entire New England grid territory), that it should not have an appreciable impact on the power grid, which already has year-on-year variation exceeding 1%.

Peak consumption is already a significant challenge to manage. But right now peak consumption is a summer problem, when AC kicks in on hot days. Because winter heating and summer AC are the biggest consumers of electricity in buildings, the proposed all-electric requirement would not have a large impact on summer peaks, as people already use electricity for air conditioning.

Q: What happens if the electricity goes out? Will we be able to have gas back-up generators? Do you have exemptions or waivers for certain facilities that would need back-up systems such as nursing homes or daycares?

This policy would not affect what happens when the power goes out, which is that most buildings would lose their heat. The reason is that today's boilers and furnaces typically require both the gas AND the electrical grid, because they have electronic ignition systems that lack battery backups. Therefore, most buildings in Brookline are already fully dependent on the electrical grid for their heat. For the few buildings, including schools and nursing homes, that need or want backup heating, the proposed policy includes an exemption for fuel pipes for backup generators.

Q: If this by-law is challenged in court, will it pass muster?

Like any ground-breaking law, this by-law may be challenged. But its rationale has been carefully thought through, and it is based on several months of legal research. We consulted with many lawyers. We cannot guarantee that this by-law will withstand legal challenge, but we have made it as legally defensible as possible. The only way to find out if it will pass legal muster is to pass it.

Q Will there be only a few contractors that can design build these systems? Will that drive costs up?

Many HVAC contractors have significant experience installing air source heat pumps. Ground source heat pump systems (sometimes referred to as "geothermal systems") have also been installed state- and nation-wide for several decades.

Q: What if this by-law triggered the need for a significant upgrade of the electrical service to an existing building? For example, a 50-unit building that has original wiring from the street to the building from the 1940's. What if the electrical upgrade costs \$200,000?

Major renovations to multi-unit buildings cost millions to tens-of-millions of dollars. The \$200,000 electrical upgrade cost must be considered in that context. This is precisely why the proposed by-law trigger is major rehabilitations and new construction.

Q: Does WA21 apply if I want to build an addition to my house?

As currently written, the work area *in the original space* would have to be over 50-75% of the original structure to trigger the by-law in the context of an addition. Just an addition alone without major rehabilitation in the existing portions of the building would not trigger this by-law. The vast majority of additions, such as adding a porch or remodeling a kitchen, do not meet this threshold. Even if the work area *in the original space* exceeded the 50-75% floor area threshold, it would still be permissible to keep an oil or gas boiler. In other words, ducts or water/steam pipes could be extended from the existing boiler or furnace into the addition. However, in this instance, fuel piping could not be installed into the new addition.

#### **Appendix A -- Comparing Hot Water Heater Options**



Manufacturer	Model	Type	Description	Price	Annual Energy Cost
A O Smith	ATI 240H 101	Tankless	Gas: Condensing	\$912	\$280
Rinnai	(RU1601) REU-N2530FF-US	Tankless	Gas: Condensing	\$1,460	\$280
Rinnai	(RUR1991) REU-NP3237FF-US	Tankless	Gas: Condensing	\$2,014	\$280
Rinnai	REU-VC2025FFU-US	Tankless	Gas: Condensing	\$687	\$282
Westinghouse	WGR050**076	Tank	Gas: Condensing	\$1,951	\$290
Rheem	XE80T10HD50U1	Tank	Electric: ASHP	\$1,700	\$306
A O Smith	HPTU-50N	Tank	Electric: ASHP	\$1,380	\$346
A O Smith	HPTU-66N 120	Tank	Electric: ASHP	\$1,679	\$356
Rheem	XG50T12HE40U0	Tank	Gas: Non-Condensing	\$689	\$407
Rheem	XE50M09EL55U1	Tank	Electric: Resistance	\$524	\$796

#### Comparing the Price and Operating Cost of a Variety of Hot Water Options

This table compares various types of hot water heaters based on data from the US Department of Energy. The prices are from Home Depot or similar outlets. The energy costs are based on what Brookline customers would be charged by Eversource and National Grid.

#### Appendix B - Sample Buildings in New England with Electric Systems

Residential (up to 3 family)

Building name	Heating and Cooling	Hot water	Location
All-electric house, rehabilitated in 2018 by Byggmeister	ASHP	Electric	Fisher Hill, Brookline, MA
Holland House, Passive, LEED Platinum, Hutker Architects	ASHP	Electric	Vineyard Haven, MA
Torcellini residence, Paul Torcellini	ASHP, GSHP	Electric	Eastford, CT
South End Row home by Zero Energy Design	ASHP	Electric	Boston, MA
Dartmouth Oceanfront House by Zero Energy Design	ASHP	Electric	Dartmouth, MA
Wellfleet modern house by Zero Energy Design	ASHP	Electric	Wellfleet, MA
Thoughtforms Net positive farmhouse by Zero Energy Design	ASHP	Electric	Lincoln, MA
Mediterranean style green home by Zero Energy Design	ASHP	Electric	Newton, MA
Marshview house by Zero Energy Design	ASHP	Electric	Chatham, MA

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.

GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

## Office buildings

Building name	Heating and Cooling	Hot Water	Location
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Walden Pond Visitor Center, LEED, Passive, Maryann Thompson Architects	ASHP	Electric	Concord, MA
Bennington Superior Courthouse, Net Zero ready, Maclay Architects	GSHP		Bennington, VT
Massachusetts Fish & Wildlife Headquarters, Net Zero, Ellen Watts, Architerra	GSHP	Electric	Westborough, MA
The Studio for High-Performance Design and Construction, Passive, Studio HPDC	ASHP	Electric	Newton, MA
185 Dartmouth, Bargmann Hendrie + Archtype	Heat pumps		Boston, MA
Olympia Place, DiMella Shaffer and Holst Architecture	Heat pumps	Propane	Amherst MA

**ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.**

**GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.**

## Educational facilities (including universities and schools)

Building name	Heating and Cooling	Hot water	Location
King Open School (middle school, elementary school, administrative offices, public pool), William Rawn Associates, Architects	GSHP	Electric	Cambridge, MA
Lexington Children's Place, Net Zero, DiNisco Design, Inc.	Heat pumps	Electric	Lexington, MA
Hastings School, Net Zero, DiNisco Design, Inc.	GSHP	Electric	Lexington, MA
The Putney School Field House, New Zero, LEED Platinum, Maclay Architects	ASHP	Electric	Putney, VT
R.W. Kern Center, Hampshire College, Bruner/Cott Architects	ASHP	Electric	Amherst, MA

Smith College, Bechtel Environmental Classroom, Coldham and Hartman Architects	ASHP	Electric	Whately, MA
Trustees of Reservations, Powisset Net Positive Barn (demo kitchen with induction stoves, administrative offices, educational learning space, root cellar), Zero Energy Design	ASHP		Dover, MA

**ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.**

**GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.**

Housing projects (large-scale)

Building name	Heating and Cooling	Hot water	Location
Auburn Court Lot C. 9, Goody Clancy Architects	Heat pumps		Cambridge, MA
Concord Highlands, ICON Architecture	VRF ASHP		Cambridge, MA
Bayside Anchor, Passive House, Kaplan Thompson Architects ★	Electric baseboard heating, electric ventilation		Portland, ME
Bristol Common, Lexington Gardens, The Architectural Team ★	ASHP		Taunton, MA
Highland Woods, Dietz and Company Architects	ASHP		Williamstown, MA
Parsons Village, Dietz and Company Architects	Heat pumps		Easthampton, MA
Millbrook Apartments, Bargmann Hendrie + Archetype Inc.	Heat pumps		Somerville, MA
Hyatt Centric Hotel, Arrowstreet	Heat pumps		Boston, MA
Distillery North, ICON Architecture	Heat pumps		Boston, MA

One East Pleasant, Holst and DiMella Shaffer	Heat pumps		Amherst, MA
Kendrick Place, Holst and DiMella Shaffer	Heat pumps		Amherst, MA
Whittier Street Apartments, The Architectural Team	Heat pumps		Boston, MA
Factory 63, Gerding Edlen	Heat pumps		Boston, MA

★ = Affordable housing

**ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.**

**GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.**

ARTICLE 23

**MOTION OFFERED BY THE PETITIONER**

VOTED, that the Town amend Section 8.31.3 of the General By-laws, as follows (additions in **bold underline**, deletions in ~~strike through~~):

SECTION 8.31.3: LIMITATIONS ON USE a. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property under their control, ~~or on the sidewalks or ways contiguous to such property~~, nor shall any person operate a leaf blower, except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to nonresidential property owners but only with respect to parcels of land that contain at least five acres of open space.

b. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property under their control, ~~or on the sidewalks or ways contiguous to such property~~, nor shall any person operate a leaf blower, except between the hours of 8 (eight) A.M. to 8(eight) P.M. Monday through Friday, and from 9 (nine) A.M. to 6 (six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or Property Manager or User shall operate or authorize the operation of more than 2 (two) leaf blowers on such property simultaneously. This limitation shall also apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any leaf blower and no person shall operate a leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any leaf blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be nonrefundable) and by appointment only at the Town's discretion. If

the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

**e. Other than pursuant to the "immediate removal" exception in paragraph f. below, no Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property or onto property not under their control, including but not limited to the sidewalks and ways contiguous to such properties, and no person shall operate a leaf blower except on private property with the authorization or permission of the Property Owner or Property Manager.**

**f. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers in a manner that intentionally distributes leaves or other debris to property not under their control, without the express consent of the owner or manager of such property, except for immediate removal.**

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town

#### **SUPPLEMENTAL EXPLANATION**

As amended, petitioner's motion provides significant relief from the frivolous use of leaf blowers and the airborne debris, unnecessary carbon emissions, and undesired noise that result from such use. At the same time, petitioner recognizes the expressed need of the landscaper community to move leaves across sidewalks for removal from private property. Petitioner's amended motion, in paragraph "f." provides an exception (essentially the exception language proposed by the Advisory Committee) that would allow landscapers, in the words of the Advisory Committee (Combined Reports, 23-3) to "blow leaves forward to the street where they collect them with a vacuum truck, as one cannot drive a vacuum truck up onto a lawn and not every location has a driveway."

In the Combined Reports, the Advisory Committee's stated that, "The added language labeled "e." essentially prohibits the use of a blower on the sidewalk unless a property owner or manager approves it (an exercise in self-granting authority). This is clearly not the intent of the petitioner." With all due respect to the Advisory Committee, prohibiting the use of leaf blowers on sidewalks, as well as streets, was exactly the intent of the petitioner!

ARTICLE 24

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

WA 24 proposes to again amend Article 3.14 of the General By-Laws pertaining to the powers and duties of the Commission for Diversity, Inclusion and Community Relations (CDICR), and Office of Diversity Inclusion and Community Relations (Diversity Office). WA 24 proposes to require the CDICR investigate discrimination complaints against the Town and recommend "appropriate action" to the relevant governing body within 90 days of the complaint. The warrant article does not propose to amend the current by-law's exception for complaints by Town or School employees but would include complaints against Town and School employees and elected and appointed officials.

The Select Board is concerned that asking volunteer town residents to serve in this capacity would open CDICR members up to liability and also provide a contradiction by asking members to be both advocate and investigator. These duties are typically covered by human resources and legal professionals who undergo countless hours of training and experience in investigative procedures and expertise in privacy, labor relations, and employment law. The Board reiterated their earlier position that a volunteer appointed body subject to the open meeting law should not be involved in specific matters that implicate complex privacy rights, labor law or other factors that could compromise the Town's interests.

The Board did note that CTOS identified some areas where the CDIRC has authority to review and receive complaints that may not be fully implemented. The HR Director also indicated a willingness to work with the petitioner on making the process more transparent. The Select Board agreed that referring the matter back to CDICR for review would be favored over an overhaul of the by-law, especially where it appears there is a mechanism already in place to address complaints. The Select Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: To refer Warrant Article 24 to the Diversity Inclusion Community Relations Commission (DICR) for review of the DICR existing complaint policy, with Petitioner Arthur Conquest and/or a designee, and the Chief Diversity Officer, and the Director of Human Resources for the purpose of improving the regulations and effectiveness of the current citizen complaint process.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 24 proposes to amend the General By-law establishing the Commission for Diversity, Inclusion and Community Relations and the Office of Diversity, Inclusion and Community Relations.



The Advisory Committee recommends REFERRAL to a Moderator's study committee.

**BACKGROUND:**

The purpose of Article 24 is "to provide for a citizen complaint procedure." When the Commission on Diversity, Inclusion and Community Relations (CDICR) was established by Town Meeting in 2014, consideration was given to providing it with the power to investigate citizen complaints of discrimination. At that time, Town Meeting decided not to include those powers in the Commission's brief. Article 24 would modify the General By-law that established the Commission to give it that power.

**DISCUSSION:**

Despite state laws against discrimination, members the groups identified in those statutes and in the Town By-law that covers the CDICR and the associated Department of Diversity, Inclusion and Community Relations encounter mistreatment that they perceive as being based on bias. This affects people of color, as well as seniors and members of the LGBTQ community. Perception is often reality, and in many cases the perception of bias is indeed correct. The petitioner wishes to provide an effective mechanism to investigate such instances and – most important – create some mechanism to respond to them.

When both DICR and the CDICR were established, the study committee that developed the enabling by-law cautioned that:

"...a volunteer appointed body subject to the open meeting law should not be involved in specific matters that implicate complex privacy rights, labor law or other factors that could compromise the Town's interests. Should this Commission be assigned this quasi-judicial role, persons appearing before them would have to be advised that they had a right to bring legal counsel and that any statements they made could later be used to their detriment. The Commission would also require extensive training and a set of procedural rules to ensure fairness in such proceedings. We believe that the CDO, under the general advice and policy direction of the Commission, is better suited for this task."

While this remains true, when someone encounters bias in the ordinary course of day-to-day life, they usually do not have a clear way to ask Town government to help them respond. A public hearing by the ad hoc subcommittee assigned to review Article 24 heard ample proof of the problem. Many people of color need no such affirmation; they have experienced instances of bias in their encounters with both Town staff and with members of the general public.

The Advisory Committee recognizes that instances of bias occur, and it agrees that there should be a way for victims to channel their desire for help. Not all complaints of discrimination processed by the DICRC (and subsequently by the MCAD) have been resolved, and referral of relatively minor instances of bias are not given priority by the Massachusetts Commission Against Discrimination, which does have quasi-legal powers.

As well, the DICRC is nearing completion of its own (required) 5-year report on its activities and review of its bylaw. It is hoped that the DICRC 5-year review will take into consideration some of the complaints made in public testimony.

The cautions that were articulated in 2014 about giving a volunteer commission quasi-legal powers remain valid. However, there are potentially suitable models elsewhere, and the Advisory Committee concluded that a Moderator's Committee should review those models and report back on possible solutions for Brookline.

**RECOMMENDATION:**

By a vote of 22-0 with 2 abstentions, the Advisory Committee recommends REFERRAL to Moderator's committee and concurs with the motion offered by the Committee on Town Operations and Structure, as follows:

**MOVED:** to refer the subject matters raised by Article 24 to a Moderators Committee that shall include members with appropriate expertise and qualifications, to report no later than to the Annual Town Meeting for 2021.

ARTICLE 24

**COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE  
REPORT AND RECOMMENDATION**

**Motion to Refer to a Moderator's Committee**

MOVED: to refer the subject matters raised by Article 24 to a Moderator's Committee that shall include members with appropriate expertise and qualifications, to report no later than the Annual Town Meeting for 2021.

**EXPLANATION**

Overall, the goal of this Article is to establish a new civilian complaint investigation procedure -- in addition to various existing procedures mentioned below -- to provide a timely and appropriate response to individuals involved in complaints. As submitted, it would amend Article 3.14 of the Town's By-laws pertaining to the Commission for Diversity, Inclusion and Community Relations and Citizen Complaints ("CDICR" or the "Commission") to add authority to investigate, make factual determinations, and recommend appropriate action regarding allegations of "discrimination or bias" committed by (1) Town officials or employees or (2) School officials or employees.

Currently, as enacted in 2014 after a year-long and diverse study committee, the Commission is empowered by §3.14 to review and summarize complaints "*without investigating or making determinations of fact, or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any Town agency, Town official or employee.*" (A separate similar section applies to School employees and referral of complaints to the Superintendent and/or School Committee.)

Mr. Conquest stated that his proposal was actually not intended to replace or delete the existing investigation procedures of current By-law §3.14(A)(vii) "Receive Other Complaints"; i.e. the deletion was inadvertent. In fact, §vii may be the only Town forum for complaints by a private citizen against another private citizen, which seems a valuable option. Therefore, CTOS believes that section (vii) should be retained in the Town's By-Laws.

CTOS members discussed the proposed changes in detail at three meetings: a public hearing on Oct. 17, then also Oct. 24 and Nov. 5. Petitioner Arthur Conquest was present and spoke at each meeting. He, and on one occasion another individual, made several allegations of incidents of misconduct by Town employees and private residents, and of inadequate Town investigations. CTOS was in no position to review those allegations, let alone how common they are. Committee members also received written comments from attorneys representing the Town and Schools with regard to both specific and more global issues in the proposed changes; and we met with the Town's Director of Human Resources.

The Committee has some overall concerns about the well-intentioned Art. 24: First, its (unstated but implicit) interaction and/or parallelism with existing Town and School complaint procedures; second, many issues relating to state and federal laws (and court decisions) involving specific types of complaints and existing regulations; and third, the qualifications of the volunteer members of the Commission to act in a quasi-judicial role, as well as the need for ample staff support with the appropriate resources and skill-sets.

As we understand, the following are the current Town and School complaint procedures:

1. Certain specified citizen complaints about Town employees should be referred to the Human Resources Director under a 2011 investigation process that was revised in 2016, entitled “*Policy Against Discrimination, Sexual Harassment & Retaliation.*”
2. Complaints about disability access should be referred to the ADA Coordinator (a staff position located within CDICR).
3. A detailed Police Dept. citizen complaint process, with optional appeals for Select Board further review, has been in effect since 1987, and is currently under review by the Select Board. A draft of those proposed changes is online at [www.brooklinema.gov/DocumentCenter/View/20608/Marked-Up-Edits-to-Select-Board-Civilian-Complaint-Policy-](http://www.brooklinema.gov/DocumentCenter/View/20608/Marked-Up-Edits-to-Select-Board-Civilian-Complaint-Policy-); and a summary is at [www.brooklinema.gov/DocumentCenter/View/20431/Report-on-the-Review-of-the-Police-Complaint-Process?bidId=](http://www.brooklinema.gov/DocumentCenter/View/20431/Report-on-the-Review-of-the-Police-Complaint-Process?bidId=) At a recent Select Board public hearing, questions arose as to some proposals, and some additional factual data that might be helpful -- for example a finding, without statistics, “we found that not all complainants making appeals to the Select Board were granted the right to be heard by the Select Board.” The full process was last reviewed by a large, broad, and diverse citizen committee in 2008, issuing a 72-page Final Report 1/7/09.
4. Complaints about School employees are, we understand, subject to a separate set of laws and procedures, and should be referred to the PSB Administration, and students are under the oversight of various separate laws and procedures for public schools.
5. Further, CTOS was told that in 2016, the CDICR voted procedures for their current responsibilities for citizen complaints. We also understand that those procedures have not yet been implemented.

While we have seen #'s 1, 3, and 5, we have not closely examined them or their performance record, nor for #'s 2 and 4, all of which seem timely to now do in a comprehensive way and coordinated for all of #'s 1-5.

The existing CDICR bylaw also states in §3.14.7, “FIVE YEAR REVIEW: Beginning no later than July 1, 2019 and at least every five years thereafter, the Commission shall review this By-law and any other related Town bylaws, in consultation with other pertinent departments, and suggest changes if necessary.” Again, we are not aware of any such review, which could of course propose specific changes related or analogous to Art. 24.

Citizen complaint review under the proposed By-law would invest the Commission and its Chief Diversity Officer (CDO) with authority and responsibilities that would require compliance with various privacy laws, union and contracting rules, Civil Service laws, the state's Open Meeting Law, and numerous other factors. Diversity Commission members -- and staff -- charged with implementing the proposed/amended bylaw would need a skill set and understanding of legal matters as well as knowledge of the numerous existing (Brookline, state, and even federal) laws, agencies, regulations, procedures, and remedies.

CTOS members strongly agree that the Town must strive for the best possible procedures for investigating citizen complaints, particularly complaints alleging racial/ethnic or gender bias, and that there must be an accessible, transparent process for making and adjudicating every complaint, with ultimate leadership and implementation responsibility falling on the Select Board. We need truly open doors; fair, timely, and responsive review processes; adherence to numerous other laws; appropriate due process for every complainant and every accused person; and timely and appropriate responses -- sometimes at the highest level of Town government. From what we have seen and heard, we are concerned that present procedures can be significantly improved, and surely merit examination.

At the same time, imposing adjudicative responsibility (and potential liability) on a volunteer commission whose members were not appointed for that purpose is not a step that should be taken lightly, nor should members of CDICR be put into a position where they could feel pressured to impose that responsibility on themselves. Indeed, we have seen that CDICR, while voting to support article 24, also stated in its "Discussion," consistent with one CTOS concern:

... Members also expressed the view that they did not have the necessary background to effectively carry out the proposed changes, and that they might need to resign to ensure that new members could be appointed who did have the necessary background.

Similarly, a prospective study should be undertaken by a diverse committee with considerable specialized knowledge, not only of existing Town procedures, but also of potential interactions with federal and state laws, as well as regulatory agencies -- including privacy rights, and requirements of civil rights, civil service, and employment laws and procedures.

Therefore, CTOS voted unanimously to refer the goals and substance of Article 24 to a Moderator's Committee with appropriate expertise and qualifications, and with appropriate staff assistance (coordinated by/with the Town Administrator). CTOS recommends that the following be included in that committee's examination:

- a review of all existing Brookline complaint regulations, policies, and procedures, including the recent proposals to amend the 2017 Police Department (and Select Board appeals) process;
- a review of any other municipal complaint models that it deems instructive;

- recommendations for improvements in all current complaint procedures, striving for both maximum feasible consistency, as well as maximum effectiveness, fairness, and lawfulness; and with appropriate staffing; and
- any other recommendations that it deems relevant to the foregoing.

ARTICLE 24

**SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

On October 24, 2019, the Brookline School Committee voted, with 6 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, and Mr. Pearlman), 1 opposed (Mr. Glover), and 1 abstention (Dr. Abramowitz) to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 24: Amend Article 3.14 of the Town's General By-laws pertaining to the Commission for Diversity, Inclusion and Community Relations and Citizen Complaints. Some members expressed concern about the Warrant Article's applicability to children in the schools.

Please see the attached legal opinion prepared by Attorney John Foskett, Valerio Dominello & Hillman, LLC.



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October 23, 2019

**VIA EMAIL**

Julie Schreiner-Oldham  
Chair  
Brookline School Committee  
333 Washington Street  
Brookline, MA 02445

**RE: Warrant Article 24 – Public Schools of Brookline**

Dear Chair Schreiner-Oldham:

The Brookline School Committee has asked our firm in our capacity as school district counsel for an opinion that can be made available to the public regarding the above matter.

As we understand it, Warrant Article 24 if adopted by the Special Town Meeting would amend the Town's General By-laws, Art. 3.14, sec. 3.14.3(A)(vi), such that the Town's Commission for Diversity, Inclusion and Community Relations ("CDICR") would be responsible for investigating "discrimination" complaints against the Public Schools of Brookline ("PSB") by interviewing the complainant and witnesses, issuing findings, and recommending "appropriate action" to the Superintendent and/or School Committee. It appears that the amendment proposed in Article 24 would apply to all school-related "discrimination" complaints against PSB except those made by employees. Accordingly, as drafted it would not exclude from the CDICR process complaints by or against PSB students.

Based on these facts, we believe that Article 24 is probably not valid and also is highly inadvisable to the extent that it applies to complaints involving PSB students.

These complaints generally arise under "Title IX", 20 U.S.C., § 1681, the federal statute which bars gender discrimination (including sexual harassment) in the public schools, and under "Title VI", 42 U.S.C., § 2000d, the federal statute which for our purposes bars discrimination based on race, color, or national origin in the public schools. The Office for Civil Rights ("OCR") in the U.S. Department of Education has made it clear that the responsibility for





preventing, investigating, and remedying these types of discrimination is placed directly on the schools and on their employees.

For example, the guidance which currently sets forth OCR's interpretation of the law regarding sexual harassment provides that "[a] school has a responsibility to respond promptly and effectively to sexual harassment"; requires that schools must adopt grievance procedures that enable the schools to discover harassment "as early as possible" and to "effectively correct[] problems"; and mandates that the school as part of its investigation take "immediate and appropriate steps to investigate" and take corrective steps promptly, including stopping the harassment and preventing its recurrence. *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, January 2001 at 9, 14-15, 19. Moreover, OCR requires that schools designate a Title IX Coordinator who is responsible for overseeing the school's Title IX compliance, including investigations and resolutions, *id.* at 21, and that school staff be trained in Title IX requirements and procedures. Because the responsibility for all of this is placed squarely on PSB, we do not believe that OCR would consider delegation of this important task to a non-PSB entity – either initially or as a further step in the process - as adequate compliance with the obligations of PSB under the law.

We note that if the CDICR process is a further step to the PSB investigation this would create an additional legal problem. These investigations must take place and conclude with a resolution expeditiously. Adding another investigatory layer would interfere with that.

This is further complicated if the investigation involves students who are placed on individualized education plans ("IEP's") or so-called "504 plans" in compliance with the federal laws that govern special education. The schools are staffed with employees who are familiar with the requirements of these laws and how they may apply to an investigation where the complainant, the victim, or both may be on such a plan. That is an additional reason to require that the investigation and outcome be handled and completed by PSB.

Frequently a complaint involving students under Title IX or Title VI will also involve what is defined as "bullying" under Massachusetts law, G.L. c. 71, § 37O. That law requires that the school district establish a bullying prevention and intervention plan that, among other things, contains procedures for "promptly responding to and investigating reports" of bullying, §37O(a)(1) and (2). The law specifies that upon receipt of a report, "the school principal or designee shall promptly conduct an investigation", § 37O(g). We therefore do not believe that



Valerio  
Dominello &  
Hillman, LLC

Julie Schreiner-Oldham

Chair

October 23, 2019

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this role can be delegated to a third party – again, whether initially or as a further step. In addition, as with the Title IX/Title VI process, bullying investigations must occur and be resolved expeditiously.

Often these investigations will result in student discipline of some sort. Article 24 apparently would involve the CDICR recommending “appropriate action”. Student discipline is clearly the province of PSB officials under G.L. c. 71, §§ 37H, 37H ½, and 37H ¾, as well as 603 CMR 53.00. Getting input from the CDICR as to student discipline would also seem improper under the law.

Finally, most of the information involved in these investigations will constitute personally identifiable education information for the specific students involved. As such it is protected from unauthorized disclosure to third parties without the consent of parents or of eligible students both by Massachusetts law, G.L. c. 71, §§ 34D and 34E and 603 CMR 23.00, as a “student record” and by federal law, “FERPA”, 20 U.S.C., § 1232g, as an “education record”. Members of the CDICR are not “authorized school personnel” under 603 CMR 23.02 and do not meet the narrow exceptions for disclosure set forth in 603 CMR 23.07(4). Likewise, they do not meet the exceptions for disclosure under FERPA as set forth in 34 CFR § 99.31.

We therefore believe that the amendment proposed by Article 24 as it would affect discrimination claims by or against PSB students would be neither valid nor advisable.

Valerio Dominello & Hillman, LLC

By:

A handwritten signature in black ink, appearing to be "John Foskett", written over a horizontal line.

John Foskett

JF:ham

cc: Elizabeth B. Valerio, Esq.  
Joslin Murphy, Esq.

ARTICLE 25

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On November 12 the Select Board voted FAVORABLE ACTION on the motion offered by the petitioner. More detail on the Board's position on these articles will be provided in the supplement to be distributed in the aisles the first night of Town Meeting.

ARTICLE 25

**SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

On October 24, 2019, the Brookline School Committee voted, with 4 in favor (Ms. Federspiel, Ms. Charlupski, Mr. Glover, and Mr. Pearlman), 0 opposed, and 4 abstentions (Ms. Schreiner-Oldham, Dr. Abramowitz, Ms. Ditkoff, and Ms. Monopoli) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 25: Adoption of New General By-law Prohibiting the Town from using Face Surveillance.

The School Committee unanimously agrees that the Brookline Public Schools should not make use of facial recognition technology for any administrative, disciplinary or similar purposes.

The members who voted to recommend favorable action on Warrant Article 25 feel that the potential impact of the Town's use of facial recognition technology could adversely impact students to an extent that justifies a Townwide ban on such technology. These members are concerned, among other things, about the impact of such technology on the civil liberties of students and the potential for students to be misidentified by such technology, particularly students of color.

The members of the School Committee who chose to abstain from the vote did so for differing reasons. For some, there was concern that opining on warrant articles that do not directly impact the Public Schools of Brookline is outside of the purview of the School Committee and, therefore, should not be done. For others, there were concerns that there could be some legitimate pedagogical uses of facial recognition technology that could be prohibited by Warrant Article 25 and that the School Committee's ability to independently prohibit the use of such technology for surveillance within the Public Schools of Brookline was a preferable approach.

ARTICLE 25

**AMENDMENT OFFERED BY CASEY HATCHETT, TMM12  
ON BEHALF OF THE SURVEILLANCE TECHNOLOGY AND MILITARY –  
TYPE EQUIPMENT STUDY COMMITTEE**

VOTED: To amend the petitioner's motion as follows:

Add as subsection (3) under SECTION 8.39.2 BAN ON TOWN USE OF FACE  
SURVEILLANCE:

**3) Notwithstanding section 8.39.2(1), the Brookline Police Department may use (but not acquire or deploy) face surveillance technology for specific and narrow purposes approved by the Select Board. (a) The Select Board may attach conditions to such uses. (b) In the absence of an approved list of authorized purposes, use is permitted before Jan 1, 2021 provided notice of the nature of the use is provided within 30 days to the Select Board, with quarterly reporting to the Surveillance Technology and Military-Type Equipment Study Committee.**

ARTICLES 26-28

**SUBSTITUTE MOTION UNDER ARTICLES 26, 27 AND 28  
OFFERED BY BETH KATES, TMM9  
AND LEE SELWYN, TMM13**

VOTED: That Warrant Articles 26, 27 and 28 shall be REFERRED to a Moderator's Committee whose membership shall include, but not be limited to, one (1) Petitioner or the Petitioner's designee for each of the three Articles, one member of the School Committee, one member of the Naming Committee, one member of the Advisory Committee, and such other members as the Moderator at his discretion may appoint. The Committee shall develop an open public process to solicit nominations from the entire Brookline community, hold public hearings and meetings all of which are duly noticed and open to the public, and shall issue a Report and Recommendation to Town Meeting for consideration at the November 2020 Special Town Meeting. The Coolidge Corner School shall continue to bear that name until such time as Town Meeting, in consideration of the Moderator's Committee Report and Recommendation, adopts an alternate name.

**PETITIONER'S EXPLANATION**

The renaming of the Edward Devotion School has polarized our community. It has been a divisive force that has driven us to question our neighbors' values. Discussions have become ugly, filled with personal accusations and threats to reputation and even livelihood. We need to reconcile our differences and come together as a community.

This MOTION would apply to all three of the renaming warrant articles – 26, 27 and 28. It would retain the Coolidge Corner School name in the interim, while creating a new opportunity for an inclusive and transparent renaming process that would allow for meaningful public participation and discussion.

The concept of "diversity and inclusion" means just that -- diversity of views and inclusion of all segments of the Brookline community. Getting it done right is far more important than getting it done quickly. There is no harm in retaining the Coolidge Corner School name until the process that is proposed in this Motion can be successfully completed.

ARTICLES 26-28

**SCHOOL COMMITTEE REPORT AND RECOMMENDATION**

Article 26

On October 17, 2019, the Brookline School Committee voted, with 7 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 1 abstention (Ms. Charlupski) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 26: Rename the Coolidge Corner School the “Florida Ruffin Ridley School.”

The selection of Florida Ruffin Ridley as the new name for the Coolidge Corner School represents the culmination of an 18 month public process that included nine public hearings, and several additional public meetings. Although the nomination of names for town buildings has typically been decided by a small number of elected individuals and departmental staff, the process that yielded the recommendation of Florida Ruffin Ridley included a broad cross-section of Brookline residents, past and present, all across the demographic spectrum. In August of 2018, the School Department engaged in a comprehensive outreach to families and staff of the Coolidge Corner School community, Devotion alumni, the Town Naming Committee, the Select Board, the Ad Hoc Task Force on School Names, and the general public. The School Committee settled on a process only after these stakeholders provided input.

In response to public interest in student participation with the school name change, a student group of 14 students (ten between grades 3 and 8, and four from the high school) were selected by a double blind lottery to serve on the student naming committee called the Bee-lievers in Change. Educational training sessions for the students were held on December 5, 2018 (“Presentation by the Petitioners”), December 12, 2018 (“Team Building and Group Decision Making Processes”), December 19, 2018 (“Hidden Brookline Walking Tour”), January 9, 2019 (“Difficult Conversations”), and January 16, 2019 (“Launch”). Presenters to the student naming committee included the petitioners of the Warrant Article that unnamed the Edward Devotion School (December 5, 2018), historian Barbara Brown (December 19, 2018), and Director of Educational Equity Dr. Kalise Wornum (December 5, 2018). The student naming committee was facilitated by Coolidge Corner School Principal Jennifer Buller and Coolidge Corner School Vice Principal Saeed Ola.

From December 10, 2018 through January 23, 2019, the students received 119 unique nominations for the new school name through a web-based form available online and at Brookline school buildings, public libraries, and Town Hall. Each of the 119 nominations were reviewed and evaluated by the students in accordance to the four elements of the

Town's Naming Criteria<sup>1</sup>, the three elements of the school motto "Work Hard, Be Kind, Help Others" and restorative justice. As the Edward Devotion School name had been removed by Town Meeting on May 29, 2018 by a vote of 171-19 after learning details of Edward Devotion's history as a slave holder, it seemed appropriate for restorative justice to be one of the eight criteria from which to consider the 119 nominations.

After narrowing the 119 unique submissions to 15 semi-finalists, all of the students who had originally applied to join the Bee-lievers in Change were invited to participate in the semi-finalist phase of the selection process. Teams of 4-5 students further researched and prepared print media presentations on each of the semi-finalists. The presentations were delivered to the public on three Renaming Nights that convened on April 3, April 11, and April 23, 2019 at the Coolidge Corner School, Brookline High School, and the Main Public Library. The public was able to interact with the student teams, learn more about each of the semi-finalists, and provide feedback. Based on the input received, the Bee-lievers in Change reconvened and came to a consensus on four names to recommend to the School Committee. On June 6, 2019, the School Committee held a public hearing to solicit feedback on the finalist names and also heard from supporters of other names.

Following a robust public deliberation on June 19, 2019, the School Committee voted 7-0-1 in favor of finalist Florida Ruffin Ridley. Believed to be the first African-American homeowner (along with her husband) in Brookline history, Mrs. Ridley (1861-1943) was a long-time resident on 131 Kent Street whose children attended the Brookline Public Schools. A teacher by profession, and only the second African-American female teacher in Boston history, Mrs. Ridley enjoyed a distinguished career as a leading civil rights activist, anti-lynching activist, suffragist, writer, and editor. She co-founded several national organizations and newspapers, as well as a local Brookline institution, the Second Unitarian Church on Sewall Avenue.

Out of the eleven school buildings in Brookline, only one is named after a woman, and none after a person of color. By renaming the Coolidge Corner School the Florida Ruffin Ridley School, we honor ourselves as a town by recognizing an individual whose underrepresented background as an African-American, as a woman, as a teacher, could have left her extensive contributions forgotten and overlooked. We honor the diligent efforts of our students whose months' long work and scholarship helped produce a name worthy of their pride. We honor a local Brookline legend whose legacy deserves immortalization.

#### Article 27

On October 17, 2019, the Brookline School Committee voted unanimously, with 8 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 0 abstentions, to

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<sup>1</sup> (1) A person/organization of excellent reputation and character who/which has set an example of outstanding citizenship and/or has made an exemplary contribution of time, service, or resources to or on behalf of the community; (2) A national noteworthy public figure or official; (3) An event of historical or cultural significance; (4) A significant donation or bequest, establishment of a trust, or other similar action.



recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 27: Rename the Coolidge Corner School the “Ethel Weiss School.”

While the School Committee recognizes the widespread affection for Ethel Weiss in the Coolidge Corner neighborhood, and appreciates her contributions to the former Edward Devotion School and its alumni, the 18 month public process yielded a different result: Florida Ruffin Ridley. The School Committee’s recommendation of no action on Warrant Article 27 by no means seeks to minimize the legacy of Ethel Weiss.

#### Article 28

On October 17, 2019, the Brookline School Committee voted unanimously, with 8 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 0 abstentions, to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 28: Rename the Coolidge Corner School the “Robert I. Sperber School.”

Although the School Committee profoundly respects the enduring legacy of its former superintendent, another town space already bears his name: The Robert I. Sperber Education Center, located at 88 Harvard St. The School Committee instead chooses to respect the 18 month public process that produced a different result: Florida Ruffin Ridley.

# **Coolidge Corner School Naming Process**

## **Overview and Timeline**

### **Overview**

In May 2018, Brookline Town Meeting Members voted to change the name of the Edward Devotion School.

This effort grew from the understanding that Edward Devotion was a slaveholder and that part of his wealth resulted from holding another human in bondage. Town Meeting Members determined that upholding such a name undermined the core values of equity and mutual respect that Brookline strives for, and charged the Brookline School Committee to develop a process to select a new, permanent name for the school.

In June 2018, the "Coolidge Corner School" was adopted as a temporary name until a new, permanent name could be recommended by the School Committee, considered by the Town Naming Committee, and approved by a vote of Town Meeting.

### **Timeline**

#### May 2018

- By a vote of 171-19, Brookline Town Meeting approves Warrant Article 23:
  - VOTED: That the Town hereby requests that the School Committee propose a new name for the Edward Devotion School after receiving public input through a process to be determined by the School Committee, and hereby requests that the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be the Coolidge Corner School.
- The Brookline School Committee is charged with developing a community-wide, inclusive process to identify a permanent name during the next school year.

#### June - August 2018

- The Coolidge Corner School is adopted as a temporary name.
- The Public Schools of Brookline begins developing the naming process by gathering input from:
  - Members of the School Committee;
  - The petitioners of Warrant Article 23;
  - Coolidge Corner School Principals and PTO leadership;
  - Educators who serve on Coolidge Corner School's Access and Equity Team;
  - The Town of Brookline's Office of Diversity, Inclusion and Community Relations; and
  - Members of the public who were able to provide input at three School Committee meetings and through electronic means.

### September - November 2018

- The School Committee finalizes the Naming Process.
- The Public Schools of Brookline announces the first call for student participation through the nominations committee.
  - Interested students may submit applications online or by completing a paper form at the Coolidge Corner School's main office.

### December 2018

- The Public Schools of Brookline announces the official call for nominations for a new, permanent name for the Coolidge Corner School.
  - All PSB students, staff, alumni, as well as all Brookline residents and the community-at-large, are eligible to submit a name.
  - Interested parties may submit nominations online through the PSB website, the Town of Brookline website, or by completing a paper form available at the District Office at Brookline Town Hall or in any of the public library branches in town.
- The Nominations Committee is formed, comprised of six 3rd-5th grade students, eight 6th-8th grade students, and four BHS students who are CCS alumni.
  - These students meet with PSB staff and community members to learn more about the naming process and begin developing the guidelines to review community submissions.

### January - February 2019

- The nomination window closes, with over 250 total entrants received.
- The Nominations Committee rename themselves the "Bee-lievers in Change" and, with support from PSB staff and community members, begins reviewing the 119 unique names that were submitted. The rubric used by the Bee-lievers in Change to research and vet each of the 119 names is built on the following guidelines:
  - Whether or not the name meets general criteria set forth by [the Town Naming Committee](#);
  - Whether or not the name meets the school's Core Values of ["Work Hard, Be Kind, Help Others,"](#) and;
  - Whether or not the name meets any [restorative justice criteria, as stated in the original Warrant Article that led to the renaming](#).

### March 2019

- The Bee-lievers in Change, by consensus, selects fifteen semi-finalist names from the 119 unique names submitted by the community.
  - The students begin researching and developing presentations for each semi-finalist name.

#### April 2019

- The Bee-lievers in Change present their selection of fifteen semi-finalist names.
  - Three Renaming Nights are held for the committee to receive feedback from the public and provide an opportunity for the Brookline community to learn more about each semi-finalist.

#### May - June 2019

- After processing input from the Brookline community, the Bee-lievers present four finalist names to the School Committee for consideration.
- The School Committee holds three Listening Sessions with the community for additional public feedback.
  - The School Committee, at their meeting on June 19, recommends moving forward with the name: Florida Ruffin Ridley School.
- In a separate school-wide vote, Coolidge Corner School students recommend moving forward with Florida Ruffin Ridley out of the four finalists.

#### July 2019 - Present

- The School Committee submits Warrant Article 26 to the 2019 Fall Town Meeting:
  - [\*"To see if the Town will vote to name the PK-8 school located at 345 Harvard St., Brookline, MA 02446 the "Florida Ruffin Ridley School", effective September 1, 2020, or act on anything relative thereto."\*](#)
- After separate public hearings, both the Town Naming Committee and the School Committee vote to recommend Warrant Article 26 to Town Meeting Members at their next meeting in November 2019.

# **The Bee-lievers in Change Nominations Committee**

## **Coolidge Corner School Naming Process**

### **Summary of Work & Timeline**

#### **Summary & Overview**

In developing a comprehensive and inclusive naming process, the Public Schools of Brookline (PSB) supported an approach that placed students at the center of the nomination process. As a result, the Nominations Committee was formed, consisting of Coolidge Corner Students from 3rd through 8th grade and high school students who had graduated from the Devotion School.

The Nominations Committee was formed in December 2018. Over the next few weeks, the students met with PSB staff and community members to learn about the impetus behind the name change and to prepare for their work in reviewing the submitted names. As a result of these workshops, the Nominations Committee renamed themselves the “Bee-lievers in Change - Students Making a Difference” in January 2019 and developed a rubric to review all 119 nominated names. This rubric, used to review and vet each name submitted by the community, was built from the following guidelines:

- Whether or not the name meets general criteria set forth by [the Town Naming Committee](#);
- Whether or not the name meets the school’s Core Values of [“Work Hard, Be Kind, Help Others,”](#) and;
- Whether or not the name meets any [restorative justice criteria, as stated in the original Warrant Article that led to the renaming](#).

In keeping with the spirit of the original warrant article, the students decided that the school’s new name should serve to lift up those who have been forgotten, or highlight those whose contributions have been overlooked.

Working in small groups, the Bee-lievers in Change researched and reviewed all 119 submitted names. Each nomination was discussed individually by the students and assessed for how well it fit their guidelines. In March 2019, they selected fifteen semi-finalist names by consensus. Each group proceeded to more fully research and developed a summary/presentation on each of the semi-finalist names, to be presented to their classmates, teachers, families, and the community-at-large. In April 2019, the Bee-lievers in Change hosted three *Renaming Nights* to showcase their semi-finalist names to the general public. Feedback received from these sessions were used by the Bee-lievers in Change to develop a shortlist of four finalist names that were sent to the School Committee for review.

## **Bee-lievers in Change**

### **Timeline and Detailed Summary**

#### **Team Development Phase**

- *December 5, 2018: Presentation by the Petitioners*
  - The Petitioners shared with students the impetus behind the renaming, explain why it is important for the Town of Brookline, describe how the process has unfolded thus far, and explain the vision the Petitioners had in creating the warrant article.
- *December 12, 2018; Team Building and Group Decision Making Processes*
  - The group works together to build its collaboration and teamwork and learn about group decision making processes. This work was led by Principal Jen Buller and Vice Principal Saeed Ola.
- *December 19, 2018; Hidden Brookline Walking Tour*
  - Student Nominating Committee members learn about the history of slavery in Brookline to allow them to consider it as part of the context and history related to the renaming process and purpose of the original warrant article.
- *January 9, 2019; Difficult Conversations*
  - PSB's Senior Director for Educational Equity Dr. Kalise Wornum led a workshop on how to have difficult conversations including role playing on how to respond when responding to questions or comments they receive from fellow students or from members of the public.
- *January 16, 2019; Launch*
  - Superintendent Andrew Bott speaks with students about the powerful and deeply important work they are embarking on and the leadership opportunity they have before them.

#### **Reviewing and Narrowing of Name Submissions Phase**

- Weeks of January 21st - March 4th
  - Using the experience they gained during the Team Development Phase, the team reviews every submission individually and assesses the submission. As necessary, the teams do research on nominations to be more fully informed about them.
  - The Bee-lievers in Change reviewed all submitted nominations and came to consensus on 15 semifinalists
  - Working in small groups, the team did additional research on all 15 semifinalists and created one page summaries about each one

#### **Semi-Finalist Phase**

- Weeks of March 11th - April 10th
  - All applicants to the process will be re-engaged and invited to participate to help review presentations and materials to help educate the public about the semifinalists.

- Mini-committees of 4-5 students created to research and develop a presentation for each semi-finalist
- PSB developed posters and flyers for each semifinalist to be used for public awareness
- Practice and preparation for three public Renaming Nights where the entire Brookline community is invited to learn about the semifinalists from the Bee-lievers in Change and provide input. Includes practicing presentations with teachers.
- April 3, 23, and 29, 2019 - Renaming Nights Open to all Community Members
  - The Brookline community invited to participate on three Naming Nights, to learn more about the semifinalists and provide input on nominees they support.
  - This open event will be set up for families and community members to drop in, interact with each of the mini-committees to learn more about each semi-finalist and view the printed media created about each semi-finalist

### **Finalists Phase**

- May 2019
  - The student nominations committee reconvened, process feedback from the three Renaming Nights and came to consensus on 4 names to move forward to the School Committee
  - The most consistent and repeated feedback received by the committee on the semifinalists was that the finalists should have a strong connection to Brookline.
  - Bee-lievers in Change lead presentations to all students in each grade to educate them about the finalists. Each class votes on finalists.
  - Coolidge Corner School students recommend moving forward with Florida Ruffin Ridley out of the four finalists.
  - Bee-lievers in Change recommend the four finalists to the School Committee at a public meeting.

ARTICLE 29

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 29 is a petitioned warrant article that seeks a non-binding Resolution of Town Meeting to fund Racial Equity projects and programs. Initially crafted as a separate financial assessment on marijuana establishments, the Resolution was revised to encourage the use of up to 35% from the local excise tax on marijuana sales. These funds would be appropriated by Town Meeting for racial equity programming as approved by the Select Board and/or the Diversity Inclusion and Community Relations Commission.

The new state law legalizing non-medical marijuana sales authorized a community impact fee that can be negotiated with a marijuana establishment as part of a Host Community Agreement (HCA). The Town has negotiated a community impact fee equivalent to 3.0% of all sales with each of the four current/prospective marijuana vendors. The proceeds of this fee must be expended in accordance with state law and Cannabis Control Commission (CCC) guidance, which stipulates that expenditures must be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment. It was unlikely that the original proposal to assess a fee, whether part of the community impact fee or otherwise, to fund racial equity programming would comply with state law or CCC guidance. As a result, the Resolution was modified to encourage the appropriation from the separate 3% local excise tax on the sale of non-medical marijuana. This tax revenue is not restricted and can be appropriated by Town Meeting for any legal purpose. The Resolution calls for expenditures of up to 35% of this revenue to fund the Racial Equity program. The Town has conservatively projected \$325,000 in Fiscal Year (FY) 2020 from the local marijuana excise tax. 35% of that sum is \$113,750.

While the Select Board prefers that these expenses be funded through the community impact fee or through special state funding, it acknowledges that the current law and CCC guidance will not permit it. The Board is also concerned that the marijuana excise tax is general municipal revenue which is used to fund the operational budget of the public schools and other municipal departments. During the last Tax Override proposal, the Board committed to raising \$2,057,619 in non-property tax revenue in FY 2021. Any portion of the taxes from marijuana sales that gets appropriated for specific purposes will require other fee increases to meet this budgetary commitment, including but not limited to the trash fee or parking meter rates. However, the Board acknowledges that the legalization of marijuana was partly intended to address the unequal treatment of racial minorities during government's historical enforcement activities (the war on drugs), and that the state's desire to redress this by empowering minority businesses to benefit from legalization lacks resources and commitment. Some members expressed support of the concept, but were hesitant to vote for the language without a better understanding of the program contemplated. The Select Board voted to recommend favorable action on Article 29 with the understanding that programs and projects funded by the excise tax will be carefully reviewed by them within the overall context of the Town's budgetary needs.



The Select Board voted 3-2 FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution urging the Select Board to support an appropriation for Racial-Equity Advancement to be funded by up to 35% of the revenue received from the Local Option Tax on marijuana revenue.

WHEREAS Brookline residents are committed to bringing about racial equity in all aspects of life, including educational, health, and economic equity.

WHEREAS the Town can use its marijuana revenue to provide funding for programs that would result in greater racial equity within Brookline.

WHEREAS a funding mechanism is needed to ensure the consistent funding of such programs.

WHEREAS the Office of Diversity, Inclusion and Community Relations in collaboration with the Commission for Diversity, Inclusion and Community Relations can steward this fund as they have close contact with the people and organizations that would be eligible for funding.

THEREFORE, be it resolved that Town Meeting requests that the Select Board establish an appropriation to support Racial-Equity Advancement to be funded by up to 35% of the revenue received from the Local Option Tax on marijuana revenue and to be managed by the Office of Diversity, Inclusion and Community Relations in collaboration with the Commission for Diversity, Inclusion and Community Relations, which will jointly develop funding guidelines and recommend specific projects for approval by the Select Board. The Office of Diversity, Inclusion and Community Relations, with approval from the Commission for Diversity, Inclusion and Community Relations, may also use a portion of these funds for new programs which advance racial equity.

**ROLL CALL VOTE:**

<u>Aye:</u>	<u>No:</u>
Greene	Franco
Fernandez	Heller
Hamilton	

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ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

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SUMMARY:

Article 29 as originally proposed outlined the establishment of a loan fund to support the establishment and capital needs of small business in Brookline operated by members of disadvantaged minorities.

The article has been amended to include revenues from the marijuana sales tax as a source of funding.

The Advisory Committee recommends FAVORABLE ACTION ON A SUBSTITUTE MOTION to offer an appropriation for Racial Equity Advancement as part of the Town's annual operating budget cycle.

BACKGROUND:

The petitioner brought Warrant Article 29 because despite potentially significant revenues coming to the Town from marijuana dispensaries, there are nonetheless no programs for the economic advancement of minorities and women, and, in particular, in assisting them in starting or expanding businesses in Brookline. Petitioner asks that a fund be created to assure equal and equitable opportunities for all the underserved residents of Brookline.

Small businesses require modest amounts of capital to start up or expand, and access to capital is often nonexistent or severely limited by the entrepreneur's lack of a track record. Banks often require that the business show profitable operations for three years, so a person who wants to start a business has to look outside the commercial banking industry for funds.

There are a handful of nonprofits that loan to startups. For example, Accion East is active in the Boston metropolitan area, and the US Small Business Administration supports a number of nonprofit neighborhood development corporations that make loans of up to \$15,000 with limited paperwork and more than that amount through a traditional loan committee review.

Nonetheless, these nonprofit lenders charge a moderately high interest rate – currently 7% -- and require repayment within five years, and they charge loan fees over and above the interest. As a result, friends and family are often the first and last resort. That may be adequate for starting a small service business, but if the startup requires renting and building out a storefront or if it requires capital equipment such as a vehicle, family and friends often cannot offer enough money.

Thus an equity fund supported by the Town and drawing funds from marijuana sales taxes has an almost reflexive appeal to those who look to the development of minority-owned small business as a matter of economic and social justice.

In accordance with a Host Community Agreement between New England Treatment Access (“NETA”) and the Town, the Town receives an aggregate of 6% of NETA’s revenues in taxes and fees. Similar fees will be received from other Brookline marijuana dispensaries as they are licensed and open. Currently, no portion of such taxes and fees are earmarked for the economic advancement of minorities and women.

Article 29, a resolution, asks that marijuana dispensaries operating in Brookline be required to provide funds to a to-be-established Economic-Equity Advancement Fund (“EEAF”), in such amounts as are expressed in the Article. As articulated in Article 29, funds received would be managed by the Brookline Community Foundation, with oversight by the Town. Policies and procedures would be developed by the Town’s Office of Diversity, Inclusion and Community Relations and the Community Planning Department, and their corresponding Commission or Board, and they would administer the EEAF to serve eligible applicants. Further, the Article asks that the Town ensure that the program “always provide the funds necessary to sustain the program.”

#### DISCUSSION:

Advisory Committee members were in general agreement with the stated objectives of the warrant article and the objective of an economically level playing field. There was considerable discussion of how the actual process of appropriation of funds would work, what the roles of the various parties identified in Article 29 would be, and whether the Town had sufficient staff resources to manage this program. There were also questions from a small number of Advisory Committee members whether the concept of restorative justice that is the basis for Article 29 is a valid one.

One concern is that people wishing to start a small business often need assistance in preparing estimates of the amount of funding they need, and they can benefit from ongoing technical assistance from existing sources of mentoring. How would a fund incorporate such assistance into its loan program?

Another point was that a loan fund is built on the assumption that the loan will be repaid, so it can become a revolving fund. The resolution seems to envision ongoing support from marijuana sales taxes. But if the funding does not stop after a reasonable base is built, that may generate far more money than can be reasonably loaned out to eligible Brookline businesses, and it would divert the funds from other important uses.

Advisory members were also very concerned about earmarking marijuana sales tax revenue for a specific use. There are other important good uses for that money, and members were unhappy with the idea that a substantial slice of it should be dedicated to just one purpose, however meritorious the purpose.

That led the Advisory Committee to conclude that Brookline should indeed support funding to help provide economic equity, but that the way to do so proper to do so is through an annual appropriation from the Town's annual operating budget. The mechanism for applying those funds would be determined by the Select Board based on circumstances from year to year.

RECOMMENDATION:

By a vote of 24-0 with 4 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the following motion

Resolve: That Town Meeting urge the Select Board to offer an appropriation for Racial Equity Advancement as part of the Town's annual operating budget cycle.

ARTICLE 31

SELECT BOARD’S SUPPLEMENTAL RECOMMENDATION

Article 31 asks the Select Board to adopt a 2050 goal of a “75/25” sustainable transportation mode split, where approximately 75% of trips are by human power (e.g. foot, bike, wheelchair), electric micro-mobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools); and 25% of trips are by single-occupant or single-passenger electric cars or trucks. The Resolution also outlines a next-decade interim goal (i.e. by 2030) of “30 + 30,” where approximately 30% of the progress needed to meet the 2050 mode split goal is achieved, and 30% of motor vehicles registered in Brookline are electric.

The Resolution outlines four specific strategies to leverage Brookline’s preexisting strengths and (1) prioritize safety, equity of access, and the healthful and sustainable movement of people and goods; (2) demonstrate, pilot, and evaluate new public way configurations; (3) align planning, zoning and budgeting (to support the goals); and (4) encourage the transition to electric vehicles.

The Resolution calls for the development and implementation a strategic infrastructure network to realize these goals; and asks the Select Board to measure and report progress and consider establishing a Sustainable Transportation Engineer or Planner position to support these goals.

The Board is in agreement with the Advisory Committee and appreciated their edits which acknowledge the Town’s budget process and funding constraints.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 31 comes out of the Select Board Climate Action Summit held in June 2019. It is a resolution asking that the Town address the negative effects that fossil fuel powered transportation has on climate change. The article seeks to develop a comprehensive plan which would include reducing the use of gas powered single occupancy vehicles, encouraging EVs, and improving public ways for non-vehicular use, including walking, biking, and other mobility options.

The Advisory Committee recommends FAVORABLE ACTION on Article 31.

### BACKGROUND:

The petitioners are focusing Article 31 on a message of climate change, health, and equity. There are three action areas that are stressed: Principles- (Prioritize, Demonstrate, Align Regulations, and Encourage Electric); Goals and Metrics- (a long-term goal to get the town to “75/25 by 2050”, meaning 25% of trips are in autos and 75% are human powered or via electric shared rides, and a short-term goal of “30/30 by 2030”, where 30% of the progress towards the 2050 goals is achieved and 30% of Brookline-owned cars are electric); and a Timeline- (asking the Select Board to report details of a program to achieve these goals no later than the 2020 Annual Town Meeting).

The resolution states that 43% of greenhouse gas emissions in Massachusetts come from transportation. The EPA data indicates that nationwide 29% come from the transportation sector. The petitioners said that Massachusetts has made progress in reducing greenhouse gases in other areas and the transportation sector has lagged behind, resulting in a larger percentage of Massachusetts emissions coming from transportation.

### DISCUSSION:

Brookline is a town with two very different areas in terms of development, density, walkability, and public transit availability. Much of South Brookline was developed in the 1940s. That area of town lacks not only a reliable public transportation network but also the convenient commercial areas and compact residential neighborhoods that developed in North Brookline. Automobile parking, for example, does not cause the same headaches in South Brookline as it does in North Brookline. Solutions and strategies that come out of this effort will have to take different neighborhood needs into account. The requirements of residents with mobility issues (especially seniors and those with disabilities) will also have to be taken into account when redesigning streets, especially in dense North Brookline, where most seniors live.

One of the petitioners noted that the article aligns with the recommendation of Governor Baker’s “Commission on the Future of Transportation” that urges “a focus on moving people over moving vehicles”. The warrant article is an attempt to coordinate efforts and draw together different Town departments in a focused approach to combating climate change. One of the petitioners noted that the resolution is not prescriptive; rather, it charts a course of action. This is a first step.

The Brookline Chamber of Commerce and the Coolidge Corner Merchants Association were presented with the various “sustainability” articles in the current Warrant and chose to focus on WAs 15 and 21. The Brookline Chamber would like any plan to include thinking about the impacts on business, employees, and customers “including visitors and residents who do not have electric vehicles or bicycles and rely on gas fueled/hybrid cars”.

The financial impact on the Town was a main focus of discussion. It is estimated that hiring a sustainable transportation engineer or planner would cost approximately \$82,000 plus benefits. Transportation Administrator Todd Kirrane has indicated that he needs more staff to carry out the provisions of the article. Given the constraints of the Town budget and the structural deficit in the coming years, the Advisory Committee was not persuaded that this position will be funded anytime soon through the annual budgeting process. There is fierce competition for additional positions throughout Town departments and the Town is facing significant structural budget deficits in the coming years. Sustainability Program Administrator Zoe Lynn stated that, once a sustainable transportation engineer/planner was hired, the Town would be eligible for grants that could make the position revenue-neutral. Mr. Kirrane noted that there are some grants, Chapter 90 and other State funds that the Town could apply for.

Some Advisory Committee members expressed concerns about the timeline to issue the report (May 2020) as being too tight a window to pull a report together; however, Ms. Lynn stated that she has been doing some of the work involved already, and the Committee decided to leave the date as is. There was also a recognition that this has to be a regional effort to have any meaningful results.

Some members also expressed regret that more emphasis was not given to addressing needed public transportation improvements (the MBTA was not mentioned in the article). Brookline pays one of the highest assessments the T receives, yet it doesn't seem to have much influence in regard to getting better, more reliable service. The needs of our increasing senior population and of our residents with disabilities were also briefly discussed but is barely mentioned in the article.

Brookline is already ahead of much of the nation in being "green", and we are too small to have any meaningful impact on the rising levels of greenhouse gasses causing global climate. That said, this is a resolution and not a By-Law and the Town can work to implement it over time as resources allow. The Advisory Committee made some small changes in the resolution, recognizing that budget implications of this article will have to be discussed within the annual budget process, and focusing responsibility for this on the Select Board.

RECOMMENDATION:

By a vote of 17-1 with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 31 as amended (see below).

(Additions are in *italics* and underlined, with deletions indicated by ~~striketrough~~)

VOTED: that the Town adopt the following resolution:

WHEREAS climate change is a major existential threat to humanity and other life on our planet, with impacts felt especially by the poor and powerless;

WHEREAS greenhouse gas emissions are causing climate change, and transportation contributes 43% of these emissions in Massachusetts;

WHEREAS there are many negative health impacts from automobile use, such as serious injuries, air pollution and physical inactivity;

WHEREAS low-occupancy travel via automobile and parking of private automobiles require a disproportionate quantity of space relative to the quantity of people and goods moved;

WHEREAS Brookline public ways currently provide only limited accessibility to non-automobile uses;

WHEREAS traffic congestion and a lack of safe, accessible, reliable alternatives to automobile transportation impose substantial time burdens and costs on individuals;

WHEREAS the Town of Brookline has adopted a Climate Action Plan to prioritize planning to achieve zero greenhouse gas emissions by 2050, Town- and community-wide;

WHEREAS the Town of Brookline has adopted a Complete Streets Policy that seeks to shift use to more healthful and sustainable transportation modes by accommodating them equitably in public ways;

WHEREAS replacement of internal combustion-powered transportation with human- and/or electric-powered transportation (and supporting electric charging infrastructure) stands to reduce greenhouse gas emissions, especially when supplied with energy produced via non-fossil-fuel-combustion means; and

WHEREAS *much of* Brookline historically developed with a pattern of land use and public ways that are amenable to the use of public transit, walking, biking and other space- and energy-efficient modes of transportation and has limited space for personal vehicle use and parking.

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls upon the Town of Brookline to leverage its pre-existing strengths, to:

- 1) Prioritize safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness. This should be accomplished in a manner that gives particular consideration to equity of access and safety for (i) people of a broad range of ages, abilities and financial means, and (ii) use of healthful and sustainable transportation modes.



- 2) Demonstrate, pilot, and evaluate new public way configurations that improve travel conditions to enable everyone to use healthful and sustainable transportation modes. Reconfigure street usage for temporary events (such as “open streets” and “Park(ing) Day”) to demonstrate the community benefits of utilizing road space for people.
- 3) Align our planning and zoning regulations within Town budgeting priorities with our historical streetcar-, biking-, and walking-centric (less automobile-dependent) development pattern. Implement “transportation demand management” policies to realign incentives towards utilization of healthful and sustainable transportation modes.
- 4) Encourage transition of motorized travel to electric vehicles and operating behaviors that eliminate local greenhouse gas emissions, including support for increased electric vehicle charging. This should be accomplished with particular consideration for avoiding any conflicts or interference with healthful and sustainable transportation modes, or with improved travel facilities for these modes.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board,~~in consultation with the Advisory Committee and any other appropriate Boards, Commissions and Committees,~~ to engage in an inclusive process to determine a course of action, applying the aforementioned four strategies, to:

- 5) Work towards a 2050 goal of a “75/25” sustainable transportation mode split, where approximately:

- 75% of trips are by human power (e.g. foot, bike, wheelchair), electric micro-mobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools), and
  - 25% of trips are by single-occupant or single-passenger electric cars or trucks; Work towards a 2030 “30 + 30” interim goal, where approximately:
    - 30% of the progress needed to meet our 2050 mode split goal is achieved, and
    - 30% of motor vehicles registered in Brookline are electric;
- For the 2050 goal, ‘electric’ excludes vehicles that can use internal combustion engines, but for the 2030 goal ‘electric’ includes plug-in hybrids.

- 6) Develop and implement a strategic infrastructure network to realize these goals (e.g. safe routes to schools; inclusive, protected bike lanes for a diversity of users; electric vehicle charging facilities);

- 7) Measure and report progress towards these goals; and

- 8) Consider establishing ~~Establish~~ a Sustainable Transportation Engineer or Planner position to support the advancement of these goals as budget priorities permit.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board,~~et~~

al., to report the details of progress made toward this course of action no later than the 2020 Annual (May) Town Meeting.

ARTICLE 33

SELECT BOARD’S SUPPLEMENTAL RECOMMENDATION

Article 33 is a petitioned article asking the Town to amend its By-laws, by removing references to “inhabitants” and “citizens” and replace them with more clarifying language to make the Town’s General By-laws more inclusive, as well as improve clarity and consistency.

The Select Board supports efforts to bring clarity to the Town’s By-laws. Furthermore, the Board supports the insertion of more inclusive language that will limit any misinterpretation that can be seen to limit rights or the inclusion of non-citizens.

On November 5, 2019, a unanimous Select Board recommended FAVORABLE ACTION on the motion offered by the petitioner.

ARTICLE 33

**COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE  
REPORT AND RECOMMENDATION**

The Town By-Laws were drafted over many years by different individuals, departments and committees. The Petitioner for Warrant Articles 33 and 34 recognized that terminology across those By-Laws is inconsistent. For example, “inhabitant” is a defined term in the By-Laws, but an “inhabitant” is defined as a “resident” and then the terms “inhabitant” and “resident” are used interchangeably in the By-Laws. Similarly, the standards for appointment to and membership on Town boards, committees and commissions are inconsistent, with some referring to “members,” others to “citizens,” and others to “residents.”

Petitioner also believes that the category of individuals protected or given privileges by a number of Town By-Laws is excessively narrow. For example, some provisions extend protections only to “citizens” or “inhabitants” in cases where Petitioner believes the protections should extend more generally to the “public.”

Petitioner, accordingly, would modify the Town By-Laws in three general ways. First, the term “inhabitant” currently defined in the By-Laws would be changed to “resident” and then the term “resident” would be used more consistently throughout the By-Laws (this change affects both Warrant Articles 33 and 34). Second, other provisions of the By-Laws would be broadened by changing the terms “citizens” or “inhabitants” to “the public,” thus broadening protections and privileges (these changes appear in Warrant Article 33). Third, the changes would make clear that membership on certain Town bodies is limited to residents of the Town (these changes appear in Warrant Article 34).

In general, the Committee on Town Organization and Structure agreed with Petitioner’s suggested changes, although it had the questions, comments and concerns discussed below on Article 33 (Article 34 is addressed in a separate CTOS Report). Petitioner participated in the CTOS meetings regarding the two articles, agreed with the modifications proposed by CTOS, and will incorporate the modifications suggested below in an amended Warrant Article 33.

A. By-Law Section 1.1.4: In Section 1.1.4 of the By-Laws (“Definitions”), Article 33 changes the term “Inhabitant” to “Resident,” but then gives “Resident” a circular definition (“Resident shall mean a resident of the Town of Brookline”). Members of CTOS found the circularity troublesome and considered recommending a more specific definition based on state law (e.g., Massachusetts General Laws Chapter 62, Section 1(f) more precisely defines “resident” for state tax purposes).

CTOS decided to support the circular definition contained in Section 1.1.4 of Article 33 for two primary reasons. First, any increased specificity would involve detailed additional cross-references to State statutes and rulings, and thus could well be beyond the scope of Article 33. Second, because term “resident” is utilized primarily to define the permissible membership of boards, commissions and committees in Article 34, it seemed reasonable to trust the appointing authority (e.g., the Select Board or the Moderator) to interpret the term “resident” sensibly without the need for detailed statutory guidance. Indeed, the term “Inhabitant” is currently defined as a “resident in the town,” and that definition has not created problems.

B. By-Law Section 3.12.3.C.10: Article 33 would charge the Director of Planning & Community Development with ensuring that the Town’s Comprehensive Plan was consistent with the welfare of “the public” rather than merely the Town’s “inhabitants” as is now the case in By-Law Section 3.12.3.C.10.

CTOS accepted “the public” language change proposed by Warrant Article 33 for By-Law Section 3.12.3.C.10, but noted that the language should be applied with common sense. For example, while the “welfare” of MetroWest commuters driving through Brookline might be considered, since they are members of “the public,” CTOS would not expect the Comprehensive Plan to suggest facilitating commutes between Boston and MetroWest suburbs either at the expense of Brookline residents by routing traffic onto Brookline neighborhood streets, or at the expense of Brookline businesses by removing parking on Route 9 to create an additional travel lane.

C. By-Law Sections 3.12.3.C.21 and 3.21.1.c: Two By-Law provisions cited in Warrant Article 33 deal with participation in the business of Town bodies. Both By-Law sections now limit such participation to “citizens.” Warrant Article 33 originally suggested changing the language to “the public.” CTOS recommends a middle ground, referring to “residents and other interested parties.”

By-Law Section 3.12.3.C.21 charges the Director of Planning & Community Development with “maximizing” input to Town boards and officials. CTOS recommends the following language:

21. to facilitate and maximize meaningful input to Town boards and officials **to the extent reasonably practical from Residents and other interested parties, including civic associations and neighborhood organizations.**

Similarly, By-Law Section 3.21.1.c deals with participation in the business of Town governmental bodies. CTOS recommends the following language:

(c) to the extent reasonably practical, to improve opportunities for broader and more meaningful participation **by Residents and other interested parties** in the business of Town governmental bodies.

The changes recommended by CTOS would broaden the language of both provisions, which as noted currently refer to participation only by those who are “citizens.” The CTOS language would also continue to recognize the important role of civic associations and neighborhood organizations, rather than deleting such phraseology as originally proposed in Warrant Article 33. At the same time, the language recommended by CTOS would not suggest that the general public, with no connection to Brookline, should have the same privileges as residents and other persons affected by Brookline governmental action. The term “and other interested parties” is intended to recognize the legitimate interests that persons such as business owners in Town, those working in Town, and property owners in Town, could have in Town decisions even if they are not residents of the Town.

While participation in Town affairs should not be narrowly limited to “citizens” as is now the case, CTOS believes that suggesting unlimited participation by any member of the “public” could discourage residents from participating in Town affairs and reduce willingness to serve on Town boards, committees and commissions. CTOS believed that chairs should exercise reasonable judgment in determining participation by “interested parties.” To take an extreme example, members of a hate group from outside the Town need not be accorded the same privileges to participate in Town decisions as those with direct interests in those decisions. It should be noted that the Attorney General, though encouraging “as much public participation as time permits” in meetings, makes clear that “public participation is entirely within the chair’s discretion.” Open Meeting Law Guide, Commonwealth of Massachusetts, Office of Attorney General Maura Healey (October 6, 2017), at 15.

D. By-Law Section 3.21.3.b and By-Law Article 7.9: The proposed change in Warrant Article 33 with respect to By-Law Section 3.21.3.b would require public meeting notices, agendas and information regarding the contact person for the meeting to be disseminated to “members of the public” who join lists for “electronic notifications (such as by email).” The current By-Law language theoretically limits membership on such meeting notice lists to “citizens.” Similarly, the proposed change in Article 7.9 of the By-Laws would provide for action to be taken to warn the “public” of snow emergency parking bans rather than merely “inhabitants of the town” as is now the case.

CTOS has consulted with the Town Clerk and Information Technology Department and determined that nothing prevents non-residents from adding their email addresses to the notification lists regarding public meetings under By-Law Article 3.21.3.b. (This is despite the facts that another current By-Law provision, Section 3.21.2, provides for such public notification lists to include “only Town Meeting Members and other Town residents,” that Warrant Article 33 does not propose a change in that language, and that any such change at this point could well be beyond the scope of the warrant.)

CTOS also was informed by the Department of Public Works and the Information Technology Department that nothing precludes non-residents from adding their phone numbers to receive automated notification of snow emergency parking bans under By-Law Article 7.9.

CTOS thus determined that the changes proposed in Warrant Article 33 to broaden the scope of notifications under By-Law Section 3.21.3.b and By-Law Article 7.9 are feasible.

E. By-Law Section 8.23.1: With regard to Section 8.23.1 of the By-Laws (“Tobacco Control”), CTOS agrees that the purpose of tobacco control should be stated as the protection of the health, safety and welfare of the public, rather than merely inhabitants of the Town, but also believes that it is important to emphasize the importance of protecting the health of youth who may lack judgment with respect to tobacco and e-cigarette consumption. Therefore, CTOS would not eliminate the reference to the “younger population” as originally proposed by Warrant Article 33. CTOS recommends the following language incorporating the reference to “public” health but also retaining the current reference to the “younger population”:

In order to protect the health, safety and welfare of the **public, including but not limited to its younger population**, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

As noted above, where CTOS has recommended changes in certain provisions of Warrant Article 33, petitioner agreed with those changes and will incorporate those changes in a revised Article.

ARTICLE 33

**PETITIONER’S SUPPLEMENTAL ARTICLE DESCRIPTION  
AND AMENDED MOTION**

Article 33 proposes changes in the Town’s general bylaws, for the most part away from using less inclusive terms such as “resident” and, more narrowly, “citizen,” to using the inclusive term, “the public,” where appropriate in the context of the bylaws

The words of our bylaws define us as a Town. They define how we view the role of Town government and whom Town government serves. Words matter, and especially our official words.

The words of our bylaws should express our efforts, as imperfect as they may be, to be a welcoming community, welcoming to those who live here, work here, and shop here, and to those who are just passing through, to those whose have birth certificates or naturalization papers, and to those who have no documents at all. That’s not currently the case.

Subsequent to the filing of Article 33, CTO&S did a thorough, multi-meeting review (of both Articles 33 and 34). All of their recommended changes are incorporated into the following, which I intend to move at Town Meeting:

VOTED: That the Town amend its General By-laws, by removing references to “inhabitants” and “citizens,” and replacing such words with more appropriate terms, and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 1.1.4 DEFINITIONS:

In construing these by-laws the following words shall have the meanings herein given, unless a contrary intention clearly applies:

- a. “Appointing authority”, unless otherwise specifically provided by law, shall be the Select Board.
- b. “By-laws” shall mean these by-laws, that do not include the zoning by-laws and the classification and pay plan, as amended from time to time.
- c. “Committee” shall include an elected or appointed board, commission, council and trustees.
- d. ~~“Inhabitant”~~ **“Resident”**-shall mean a resident ~~in~~ **of** the town **of Brookline**.
- e. “Legislative body” shall mean the Town Meeting.
- f. “Law”, “General Laws” Or “Chapter” shall mean the law, statute or act referred to, as amended from time to time.
- g. “Municipal officer” shall mean an elected or appointed official or member of a committee and a department head but shall not include Town Meeting Members and Town employees.

SECTION 2.1.10 TOWN MEETING MEMBERS AT LARGE:



Pursuant to the authority contained in Section 5 of Chapter 43A of the General Laws (Ter. Ed.) the following officers are designated as Town meeting members-at large: (1) ~~the members, inhabitants~~ **residents** ~~of the Town,~~ who are the elected representatives of the Town **or any part thereof** in the General Court of the Commonwealth of Massachusetts, (2) the moderator, (3) the town clerk, and (4) ~~the Select Board~~ **members**.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT -  
SECTION 3.12.3 DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT -  
subsection (C), item 10 and 21:

10. to provide the ~~town~~ **Town** with and, from time to time, amend Comprehensive Plans for land use, public and private transportation and parking, open space, recreation, urban renewal, telecommunications and utility services, economic development, housing, historic preservation and also for the future development and preservation of town resources consistent with its physical, social and economic requirements and the health, safety and welfare of ~~its inhabitants~~ **the public**.

21. to facilitate and maximize meaningful input to ~~town~~ **Town** boards and officials **to the extent reasonably practical** from ~~Brookline citizens~~ **Residents and other interested parties, including** civic associations and neighborhood organizations.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY  
RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY  
RELATIONS – SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION –  
item (v):

(v) Receive Complaints Against the Town, directly or through the CDO, against the Town, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Town, except Town employees (see Section 3.14.2), and after notifying the Town Administrator, review and summarize the complaint and issues of concern to the Commission, without investigating or making determinations of fact, or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any Town agency, Town official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the Town Administrator and the Select Board for consideration of further action and/or (2) provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's ~~Citizen~~ **Civilian** Complaint Procedure or the Human Resources Office's procedures;

ARTICLE 3.15 HUMAN RESOURCES PROGRAM, BOARD AND OFFICE SECTION  
3.15.1 PURPOSE AND INTENT

The purpose of this bylaw is to ensure the establishment of fair and equitable Human Resources policies for the Town of Brookline and its employees; and to provide a system of Human Resources administration that is uniform, fair, and efficient and which represents the mutual interests of the ~~citizens of the Town~~ **public** and the employees of the Town.

SECTION 3.15.2 HUMAN RESOURCES PROGRAM TO BE CONSISTENT WITH ACCEPTED MERIT PRINCIPLES AND APPLICABLE STATE AND FEDERAL LAWS – item (e):

(e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, gender, gender identity or gender expression, sexual orientation, marital status, handicap or religion and with proper regard for privacy, basic rights outlined in this chapter and their constitutional rights ~~as citizens~~, and;

ARTICLE 3.21 READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS AND RECORDS -

Section 3.21.1 Purpose and Applicability:

This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful ~~citizen~~ participation by Residents and other interested parties in the business of Town governmental bodies.

Section 3.21.3 Meeting Notices and Agendas – item (b):

(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to ~~citizens~~ members of the public who join the aforementioned notification list(s).

ARTICLE 4.1 ACCOUNTS AND AUDITS SECTION - SECTION 4.1.3 AUDIT REPORTS

All reports by the independent auditor shall be available for inspection by ~~citizens of the Town~~ the public during regular business hours at the Town's offices. The audit report shall also be made available at the Main Library.

ARTICLE 4.6 PUBLIC RELATIONS AND INFORMATION

The Town may appropriate a sum not to exceed \$1,500.00 in any year to be expended by the Personnel Board, with the approval of the Select Board, for the purpose of furnishing information including, without limitation, the results of its investigations, its opinions and recommendations, to the ~~inhabitants of the Town~~ public or to Town Meeting members, pertaining to an article or articles in the Warrant for a town meeting which relate to wages, hours or other conditions of employment of ~~town~~ Town employees.

ARTICLE 4.8 LIVING WAGE BY-LAW - SECTION 4.8.6, item (c), first paragraph:

c. Enforcement Grievance procedures and nondiscrimination. Any covered employee who believes that his or her employer is not complying with requirements of this article applicable to the employer has the right to file a complaint with the town's Chief Procurement Officer or Select Board. Complaints of alleged violations may also be filed by concerned ~~citizens~~ members of the public or by a town official or employee. Complaints of alleged violations may be made at any time and shall be investigated promptly by or for the officer or board that received the Complaint. To the extent allowed

under the Public Records Law, G.L.c.66, statements, written or oral, made by a covered employee, shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the covered employee.

ARTICLE 6.6 DISCHARGING FIREARMS:

No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any ~~citizen~~ person.

ARTICLE 7.9 SNOW PARKING BAN:

No person shall allow any vehicle to remain in or within a street or way when a snow emergency parking ban has been declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member.

A Snow Emergency Parking Ban may be declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member, whenever there are indications that the threat of substantial snow is imminent, whenever there has been a substantial snow and snow removal operations are underway or are about to commence, or whenever a substantial snow creates conditions that require a vehicular driving or parking ban throughout the town. Upon the declaration of a Snow Emergency Parking Ban notice thereof shall be given to the Town Clerk's office, the Police Department, the Fire Department and the Department of Public Works. Reasonable action shall also be taken to notify and warn the ~~inhabitants of the Town~~ public of the ban.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.4 NO DISTURBING THE PEACE:

No person hawking, peddling, or carrying or exposing any article for sale shall cry his wares to the disturbance of the peace and comfort of the ~~inhabitants of the Town~~ public, nor shall carry or convey such articles (in any manner that will tend to injure or disturb the public health or comfort nor) otherwise than in vehicles and receptacles which are neat and clean and do not leak.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.2 LICENSING

The Town Administrator shall have authority to grant such license to any person of good repute for morals and integrity ~~who is or has declared his intentions to become a citizen of the United States~~. Said license, unless sooner revoked by the board or officer granting the same, shall expire one year from the date of issue, and each person so licensed shall pay therefore a fee of twenty-five dollars.

ARTICLE 8.15 NOISE CONTROL:

SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE , item (a):

- (a) Whereas excessive Noise is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive Noise may be substantially abated; and whereas the

people have a right to and should be ensured an environment free from excessive Noise that may jeopardize their health or welfare or safety or degrade the quality of life; now, therefore, it is the policy of the Town of Brookline to prevent excessive Noise which may jeopardize the health and welfare or safety of ~~its citizens~~ **the public** or degrade the quality of life.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

- (b) The applications required by (a) shall be on appropriate forms available at the office of the Select Board. The Select Board, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered: (1) the cost of compliance will not cause the applicant excessive financial hardship; (2) additional Noise will not have an excessive impact on ~~neighboring citizens~~ **the public**.

ARTICLE 8.16.1 COLLECTION AND RECYCLING OF WASTE MATERIALS - PURPOSE:

Article 8.16 is enacted to maintain and expand the Town's solid waste collection and recycling programs under its Home Rule powers, its police powers to protect the health, safety and welfare of ~~its inhabitants~~ **the public** and General Laws, Chapter 40, Section 21; Chapter 21A, Sections 2 and 8; Chapter 111, Sections 31, 31A and 31B and to comply with the Massachusetts Waste Ban, 310 CMR 19.

ARTICLE 8.23 TOBACCO CONTROL - SECTION 8.23.1 – PURPOSE:

In order to protect the health, safety and welfare of the ~~inhabitants of the Town~~ **public**, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

ARTICLE 8.29 NUISANCE CONTROL - SECTION 8.29.1 PURPOSE:

In order to protect the health, safety, and welfare of the ~~inhabitants of the Town~~ **public**, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS - SECTION 8.30.1 PURPOSE/AUTHORIZATION:

In order to protect the health, safety, and welfare of the ~~inhabitants of the Town of Brookline~~ **public**, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct

criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Article 8.31 Leaf Blower Control – SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The Select Board, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered: (1) the cost of compliance will not cause the applicant excessive financial hardship; (2) additional noise will not have an excessive impact on ~~neighboring citizens~~ **the public**. (3) the permit may require portable acoustic barriers during night use. (4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance. (5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law. (6) If the Select Board, or its designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Select Board, or designee, to support this claim.

ARTICLE 34

SELECT BOARD’S SUPPLEMENTAL RECOMMENDATION

Article 34 is a petitioned article asking the Town to amend its By-laws, by setting a consistent standard of “resident” as the requirement for appointment to and continued service on a Town board, committee, or commission.

The Select Board continues to support efforts to bring clarity to the Town’s By-laws. The Board supports the insertion of the inclusive language of “resident” rather than “citizen” to limit any misinterpretation that can be seen to limit rights or the inclusion of non-citizens on serving on a Town board, committee, or commission, as allowable by law. Board members encouraged taking a look at changing the requirements for Town Meeting membership to allow other populations such as immigrants or refugees to participate and be represented in the local process.

On November 5, 2019, the Board recommended FAVORABLE ACTION, by a vote of three in favor and two abstentions, on the motion offered by the petitioner.

**ROLL CALL VOTE:**

Aye:

Greene  
Hamilton  
Fernandez

Abstention:

Franco  
Heller

## ARTICLE 34

### **REPORT OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE**

Warrant Article 34 attempts to reconcile inconsistent terminology in our by-laws regarding appointments to Town boards, committees, and commissions. Its intent is to ensure everyone serving is a current resident and that common, standardized terms are used. The article would also impose residency requirements where none currently exist. The Committee on Town Organization & Structure (CTOS) considered Article 34 at multiple meetings and had extended discussions with the petitioner. CTOS recommends FAVORABLE ACTION on a revised motion to be offered by the petitioner. We expect that the petitioner will include the full text of that revised motion in the supplement to the Combined Reports.

### **DISCUSSION**

Various articles in Brookline's current by-laws were established over time and not always consistently, leaving us with a hodgepodge of terms. Throughout our by-laws, resident members of boards, committees, and commissions are variously referred to as "member", "citizen", "resident", and "volunteer member". Warrant Article 34 seeks to impart better clarifying and consistent language in these by-law articles. Viewed as a whole, our current by-laws can appear a bit dog-eared and in need of neatening up.

Consistency of terms has value. The term "citizen" can have a very broad interpretation and has probably come to be understood a bit differently than originally intended – potentially a citizen of the United States who is not even a resident of Brookline. Alternatively, and perhaps of more concern, it can be interpreted to exclude long-term or even permanent residents of Brookline who do not happen to be citizens of the United States.

While it is intended that some "members" of Town organizations be residents of our town, it is not true, or at least not explicitly expressed in our current by-laws in all cases.

In addition to providing common terms, many of the changes posited in Warrant Article 34 yield substantive structural changes of intent or changes in practice in our by-laws. Some of these changes may have implications that should be considered carefully.

For example, the term "citizens" is changed to "residents" in the COUNCIL ON AGING SECTION 3.10.1. Assuming we now use "citizen" to mean "resident", then the change is not substantive. Likewise, under ARTICLE 3.2 SCHOOL COMMITTEE a change from "residents" to "members" is consistent in that School Committee members are required to be elected – and are therefore residents.

In other cases, however, "members" becomes "residents" in the by-law's list of requirements for who is eligible to serve on a board, commission, or committee, and that

can be a change of substance and can narrow eligibility. Article 34, as it initially appeared in the Warrant, would institute a requirement that members of the following boards, commissions, and committees be residents: Commission for Women; Commission on Disability; CTOS; Audit Committee; Board of Appeals; Preservation Commission; and Naming Committee.

CTOS paid particular attention to the impact of Article 34's proposed changes on the Commission for Women and the Commission on Disability.

Currently, the Commission for Women only requires the appointment of "members", not that they necessarily be residents. This is true for the Commission on Disability as well. By adopting the changes initially proposed in this warrant article, we would require members to be residents. Warrant Article 34 implies a certain value judgment that it deems advisable, and worth changing, in all cases. That notion may not be embraced by everyone and can be potentially counterproductive in some cases.

In the opinion of CTOS, no changes should be made to the current by-law structure with regards to the Commission for Women or Commission on Disability. The CTOS heard voices from and for the Commission for Women with a strong conviction that there may well be instances where a non-resident of Brookline, with a certain contributory understanding of women's issues, could well serve on the Commission. Likewise, CTOS feels that there are members of our community, though non-residents, who may contribute significantly to the Commission on Disability. As an example, The Massachusetts Association for the Blind and Visually Impaired (MABVI) is located in Brookline. As a member of the Brookline community, MABVI (originally founded by Helen Keller) has contributed significantly with programming geared toward Brookline residents and has had a close working relationship with our Senior Center. There is undoubtedly a pool of talent and understanding in the MABVI staff. While not residents, they are community members. In addition, the current by-law indicates that one member of the Commission on Disability should be a member of the Select Board or a Department Head. Many Departments Heads are not residents of Brookline, and this is another reason not to impose a residency requirement.

Of the other Town organizations that would require member residency under this article, we believe it is a reasonable constraint. The other organizations (2.3 CTOS, 3.5 AUDIT COMMITTEE, 3.6 BOARD OF APPEALS, 5.6.4 PRESERVATION COMMISSION, 6.8 NAMING COMMITTEE) all have a more intimate relationship to the town and having members of these organizations be Brookline residents probably best serves our community. CTOS recognized that, in general, Brookline residents should have the responsibility of serving on Brookline's boards, commissions, and committees that make important decisions that affect the town. In discussions of the Audit Committee, CTOS noted that Brookline has many residents who can bring valuable experience and expertise to this committee, and that the auditor retained by the Town brings an external perspective to the committee.



In several instances, the change from “citizens” to “residents” is accompanied with the phrase “so long as they remain residents”. This is to ensure that after the time of appointment, should a member move and no longer be a resident of Brookline, their term ends. It is a term not needed in every instance, but it is in some. Note that some of the current by-laws specify that members of a board, commission, or committee must be residents in order to serve on the relevant body, whereas others only stipulate such a requirement for members at the time of their appointment. By adding the phrase, “so long as they remain residents” in some places, Article 34 makes the by-law more consistent.

Under ARTICLE 3.16 PARK AND RECREATION COMMISSION, the following codifying language is added: “There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.” This is because, even though it has been occurring in practice, it has not been codified.

A proposed change of substance appears under ARTICLE 2.2 ADVISORY COMMITTEE by adding the phrase “to the extent practicable” after noting that at least one elected Town Meeting Member (TMM) shall be appointed from each precinct. Our current by-law requires at least one TMM from each precinct and no more than four. However, in practice, this is not always achievable, and from time to time there are unfilled openings in a precinct. This phrase recognizes that reality. We cannot require that a TMM, when asked, must serve on the Advisory Committee. Concern was raised that, in theory, this might allow for potential “stacking” within the Advisory Committee ranks. Some felt that should such sinister inclinations actually manifest themselves, Town Meeting, if not the electorate, would quickly rectify the situation. Moreover, in the absence of a TMM from a precinct, the Moderator has sought to appoint a precinct resident to the Advisory Committee to give voice to that precinct. We know that there are times when the TMM provision of the by-law cannot be fulfilled. By ignoring that reality, however, we tacitly accede to a violation of our by-law and thus CTOS believes that adding the “practicable” phrase proposed by Article 34 is warranted.

The other change of substance would allow the appointment of a “resident” who may not be a registered voter (though clearly this would not be the case for elected Town Meeting Members). The CTOS believes this is a change that may productively serve the Advisory Committee. While the majority of Committee members are registered voters and likely quite politically active, the intent of the Committee is to be deliberative and, to the extent possible, keep politics at bay. We are all advocates of sorts, but within the Advisory Committee one must serve as a steward. The propose change here is in keeping with that recognition, allowing for a slightly different voice from the community.

### *Summary*

Below is a summary of the changes originally proposed in Warrant Article 34.

### Member vs Resident

The substantive change here is that where membership in an organization does not necessarily require one to be a resident, the changes in WA 34 will now require it.

This is true for the following:

2.3 CTOS, 3.5 AUDIT COMMITTEE, 3.6 BOARD OF APPEALS, 3.9 COMMISSION FOR WOMEN, 3.23 BROOKLINE COMMISSION ON DISABILITY, 5.6.4 PRESERVATION COMMISSION, 6.8 NAMING COMMITTEE.

“So long as they remain residents”

This phrase is used in four places: 3.7 BUILDING COMMISSION, 3.11 INFORMATION TECHNOLOGY (ITAC), 3.12 PLANNING BOARD, 6.8 NAMING COMMITTEE.

There is consistency of the use of this phrase in these four cases, as members are appointed (as opposed to “shall consist of”) and they may be residents at the time of appointment, but nothing indicates that they must continue to be residents. The new phrase would now require it.

One-offs

2.2 ADVISORY COMMITTEE: membership is by appointment. Committee members would no longer have to be registered voters, only “residents”. The requirement that there be at least one (but no more than four) Town Meeting Member (at the time of appointment) from each precinct can be set aside at the discretion of the Moderator with the introduction of the phrase “to the extent practicable”.

4.9 ELECTION CAMPAIGNS: membership is by appointment. The appointing authorities are the Town Clerk, the Select Board, and the Moderator. Only the Moderator is required to appoint “residents”. Members appointed by the Town Clerk or Select Board need not be residents. This is currently the case in our by-laws, and WA 34 does not seek to change that.

*CTOS Changes*

The CTOS suggested not making changes to the current structure of the Commission for Women or Commission on Disability. Also, the CTOS suggest that no changes be made to the Committee on Campaigns as Town Meeting may well remove that provision this fall. The petitioner accepted our changes and incorporated them into his revised main motion under Article 34.

*Conclusion*

The broader question in all of this, aside from the use of common terms, is to what extent we want to require residency as a requirement for membership in various Town organizations. The CTOS believes the petitioner’s revised motion strikes a solid balance. Other than the above mentioned, no objections were voiced to the CTOS regarding the

residency requirements, nor were any objections conveyed to us through the Select Board. The CTOS believes that the housekeeping proposed under Article 34 will be benign, though specific bodies may yet (even as late as the debate at Town Meeting) provide reasons why the limitation to resident members should not apply to them. As stated above, however, we feel there is a reasoned argument to require it in many if not most instances.

#### RECOMMENDATION

The changes offered in Warrant Article 34 help streamline and clarify our by-laws as such, by a unanimous vote taken on November 5th, the CTOS recommends FAVORABLE ACTION on the petitioner's revised motion.

ARTICLE 34

**PETITIONER'S SUPPLEMENTAL ARTICLE DESCRIPTION  
AND AMENDED MOTION**

Article 34 proposes changes in the Town's general bylaws, standardizing, to the extent practicable, the criteria by which we define who is eligible to serve on those boards, committees and commissions.

Currently, for the most part, you need to be a Brookline resident to serve on the Brookline boards, committees and commissions that are defined in the Town's general bylaws. On some, however, non-residents may serve, while others require members to be a citizen or a voter. Some measure status only at time of appointment or at time of nomination, raising questions as to the intent of the bylaws regarding continuing membership should that status change.

The proposed motion under Article 34 sets resident as the default criteria to serve as a member of a bylaw-defined board, committee or commission, except in those cases where broader eligibility is believed to be necessary and appropriate, or except where narrower eligibility is required by law and/or is implicit.

Subsequent to the filing of Article 34, CTO&S did a thorough, multi-meeting review (of both Articles 33 and 34). All of their recommended changes are incorporated into the following, which I intend to move at Town Meeting:

VOTED: That the Town amend its General By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

**ARTICLE 2.2 ADVISORY COMMITTEE - SECTION 2.2.1 APPOINTMENT OF MEMBERS**

The Moderator shall, in June of each year, appoint ~~citizens~~ **members** ~~to serve on~~ **of** the Advisory Committee (herein the Committee) established under G.L.c. 39, Section 16, and this Bylaw. Members of the Committee shall serve without compensation. The Committee shall consist of not fewer than twenty nor more than thirty ~~registered voters~~ **residents** of the Town. At least sixteen Committee members shall be elected Town Meeting Members at the time of their appointment. At least one elected Town Meeting Member shall be appointed from each precinct, **to the extent practicable**. No more than eight members shall be appointed who are not elected Town Meeting Members at the time of their appointment. No more than four members of the Committee shall reside in the same precinct. No member of the Committee shall be an employee of the Town or a member of any standing Board or Committee having charge of the expenditure of money; but, this restriction shall not disqualify from appointment to the Committee, members of special committees, which may be created from time to time by Town Meeting, the Moderator or the Select Board to report on specific matters.

ARTICLE 2.3 COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE -  
SECTION 2.3.1 APPOINTMENT OF MEMBERS

There shall be a Committee on Town Organization and Structure (CTO&S) to consist of seven ~~members~~ **residents**, appointed by the moderator for three year staggered terms.

ARTICLE 3.2 SCHOOL COMMITTEE

There shall be a School Committee, comprised of nine ~~residents~~ **members** elected for three year staggered terms.

ARTICLE 3.5 AUDIT COMMITTEE SECTION - 3.5.1 APPOINTMENT

There shall be an Audit Committee consisting of six **resident voting** ~~members~~, with appointment not restricted to the ranks of the appointing bodies. The Select Board shall appoint one member, the Advisory Committee shall appoint one member, the School Committee shall appoint one member and the Town Moderator shall appoint three members. The membership shall elect a chairperson annually from among their number. Appointments shall be for a term of three years. All terms shall expire on August 31. Any vacancy occurring in the Committee shall be filled by the appropriate appointing body for the balance of the unexpired term.

ARTICLE 3.6 BOARD OF APPEALS

There shall be a Board of Appeals, as provided in General Laws Chapter 40A, Section 12, to consist of three ~~members~~ **residents** who shall be appointed by the Select Board, for terms of such length and so arranged that the term of one member shall expire each year. One member shall be an attorney and at least one of the remaining members shall be a registered architect, professional civil engineer or master builder. The Zoning By-laws may provide for the appointment of associate members.

ARTICLE 3.7 BUILDING COMMISSION; PROCEDURE FOR THE CONSTRUCTION  
AND ALTERATION OF TOWN BUILDINGS AND STRUCTURES SECTION - 3.7.1  
APPOINTMENT OF MEMBERS

The Select Board shall appoint five ~~citizens~~ **residents** to serve as members of the Building Commission (the Commission), which shall have charge and direction of the construction, repair and alteration of all town buildings and all buildings and structures placed on town land. **So long as they remain residents, the** ~~The~~ members of said Commission shall hold office from the 1st of September following his or her appointment for three year staggered terms, and until a successor is appointed. Commission appointments shall be made to preserve three year staggered terms, with two members appointed one year, two members appointed the following year and one member appointed the third year. They shall serve without compensation. The Commission shall comprise a registered architect, a registered engineer, a licensed builder, and two other ~~citizens~~ **residents**. The Building Commissioners shall act as Secretary of the Commission. The Select Board shall have the power to fill any vacancy in the Commission. With respect to the selection of an architect, engineer, or other consultant (the consultant) for building projects, the Commission shall by regulation, adopt procedures, by regulation which conform to the requirements of the laws of Massachusetts.

ARTICLE 3.9 BROOKLINE COMMISSION FOR WOMEN - SECTION 3.9.4  
MEMBERSHIP, APPOINTMENT, TERM, item (a):

- (a) The Commission shall consist of eleven residents, all of whom shall be appointed by the Select Board to serve for a term of three years.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 3.10 COUNCIL ON AGING SECTION 3.10.1 ESTABLISHMENT -  
SECTION 3.10.2 MEMBERSHIP

The Council on Aging shall consist of the Chair of the Select Board, Chair of the Park and Recreation Commission, Chair of the Housing Authority, Director of Public Health, Superintendent of Schools, Head Librarian, or their respective representatives, and, in addition, fifteen ~~citizens~~**residents** reflecting the general composition of the ~~citizenry of Brookline town~~. The ~~Citizen~~**resident** members shall be appointed by the Select Board after receiving recommendations from public and private agencies concerned with the welfare of older persons. Fifty-one percent of the members of the Council on Aging shall be composed of persons 60 years of age or over. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

SECTION 3.10.3 TERMS AND CHAIR

Length of term of ~~Citizen~~**resident** Members shall be determined in the following manner: Initial ~~Citizen~~**resident** Membership shall be split as evenly as possible into thirds. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a one year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a two-year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a three-year term. All subsequent ~~Citizen~~**resident** Members shall be appointed for a three-year term.

ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION  
3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE

The Select Board shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered **terms and so long as they remain residents**. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT -  
SECTION 3.12.6 PLANNING BOARD:

The Select Board shall appoint seven residents to serve on the Planning Board for five year staggered terms **and so long as they remain residents**. At least one of the appointees must be qualified for such appointment by virtue of relevant and significant experience or training in the field of environmental or urban planning. The Planning Board is established under G.L.c. 41, §81A, and shall perform and discharge all of the statutory powers and duties required by law, including those set forth in The Zoning Act, G.L.c. 40A, in the

Subdivision Control Act and other relevant sections in G.L.c. 41, Sections 81A to 81GG, inclusive, in Chapter 270 of the Acts of 1985 and in G.L.c. 41.

**ARTICLE 3.13 HOUSING ADVISORY BOARD - SECTION 3.13.2 MEMBERSHIP:**

The Housing Advisory Board shall consist of seven residents ~~of the town~~, five appointed by the Select Board for three year staggered terms, and a member each of the Planning Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low or moderate income tenant who demonstrates a knowledge of tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

**ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.1 ESTABLISHMENT AND PURPOSE:**

The Commission shall consist of fifteen (15) residents ~~of the Town~~, who shall be called Commissioners.

**ARTICLE 3.16 PARK AND RECREATION COMMISSION**

**There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.**

**ARTICLE 3.23 BROOKLINE COMMISSION ON DISABILITY - SECTION 3.23.4 MEMBERSHIP**

The Commission shall consist of seven (7) or nine (9) residents appointed by the Select Board. The majority of members shall consist of people with disabilities. One member shall be a member of the immediate family of a person with a disability. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. If any member is absent from three or more regularly scheduled meetings in any one calendar year, a recommendation shall be made by the chairperson to the Select Board that such member be removed from the Commission, unless any or all absences are excused for good cause by the chairperson. Good cause shall include, but not be limited to: illness, a death in the family, severe weather, and professional responsibilities. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Commission may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Commission without the approval of the Commission. All members, with the exception of the Town's ADA Coordinator, shall have full voting rights.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

**ARTICLE 4.9 ELECTION CAMPAIGNS – item (G):**

(G) Committee on Campaigns (1) There shall be a Committee on Campaigns consisting of not less than five nor more than seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and not less than

three nor more than five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman, School Committee, Library Trustee, Housing Authority, Moderator, Town Clerk or Constable shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

#### SECTION 5.6.4 MEMBERSHIP OF THE PRESERVATION COMMISSION

The Brookline Preservation Commission, hereinafter referred to as the Preservation Commission, shall consist of seven (7) ~~members~~ **residents** appointed by the Select Board. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

#### ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE

(A) Appointment - The Select Board shall appoint a Committee of not less than five nor more than seven ~~members~~ **residents** for staggered three year terms **and as long as they remain residents** to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission, the Commission for Diversity, Inclusion and Community Relations and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.



ARTICLE 1

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Special Town Meeting 2, Article 1 would change the minimum voting age for municipal election to age 16. Existing State and federal requirements would remain in effect for those elections

The Advisory Committee recommends NO ACTION on STM 2, Article 1.

BACKGROUND:

Warrant Article 1 of Special Town Meeting 2 seeks to ask the Select Board to petition the state legislature to allow the Town to lower the voting age to 16 years old in municipal elections. The Select Board does not need Town Meeting’s permission to make this request; however, the Select Board has expressed the “desire to know Town Meeting’s preference before speaking for the entire town.”

Communities across Massachusetts (including, recently, Somerville, Concord, Ashfield, Shelburne, Wendell, and Northampton, as well as efforts by Cambridge, Harwich, and Lowell in prior years) have taken steps towards lowering their voting age. There is a prominent national “VOTE16” movement. At the state level, H.720/S.389 (the “EMPOWER Act”) would give cities and towns the option to lower their voting ages to 16 without the need to file home rule petitions.

Municipal voting is a largely unexercised right in Brookline: average turnout for the most recent 10 years in Brookline’s municipal elections is 16%; the high turnout for that period was 29%. Analysis from other communities (abroad) shows that one is more likely to develop a lifelong voting habit if voting begins at 16 than if it begins at 18, although there remains some disagreement around the explanations.

US society is filled with a hodgepodge of age restrictions which reflect a lack of consensus regarding when “maturity” has been reached: access to tobacco or alcohol products, the right to drive, the right to vote, the right to choose an abortion, the right to marry, access to “juvenile” sentencing, the ability to join the military (or be drafted), and “emancipation” all have age restrictions. Many of these use 18 as the cutoff, but this varies regionally and, in addition, has changed significantly over the years. There are active campaigns to raise the ages of access to tobacco and alcohol, raise the age of emancipation, raise the driving age, and lower the voting age. These campaigns often cite brain development studies as the basis for whatever age is proposed, and science seems to show that the ability to make different types of decisions does vary with maturity (for example, as one matures one tends

to become less impulsive, which could have implications for certain types of decision making).

These threshold ages are not strictly independent. When the age of military service was decreased, substantial pressure to lower the voting age and the drinking age ensued. When the voting age dropped, the emancipation age quickly followed.

#### DISCUSSION:

The Advisory Committee is overwhelmingly opposed to Warrant Article 1. Although many members acknowledged substantial political and social contributions from teenagers, ranging from those who have sponsored Warrant Articles or spoken at Town Meeting all the way to Greta Thunberg and the climate strike, most members expressed sympathy with the recent statement from Governor Baker, who said “I raised teenagers, and based on that I’m pretty dubious about lowering the voting age to 16.” As an example, during the committee discussion one member said “Would I want to put my fate in the hands of 16 year-olds? With all due respect, I would not.”

A repeated theme was that 16 year-olds in general simply do not have sufficient experience or expertise to make informed political decisions and that to the extent that our schools provide civics education this education is not an adequate substitute.

Considerable time was spent discussing the concerns raised by Kate Silbaugh (TMM-1), who has been independently researching this topic for some time. Her concerns are expressed from a child welfare perspective. At the moment, there are many active political constituencies (including Brookline’s repeated adjustments to the age limits around tobacco) attempting to raise the ages associated with certain activities. Lowering the voting age makes these efforts more difficult. In addition, it puts pressure on lowering the age of emancipation, which can have dire consequences for children. Advisory Committee members were quite concerned about the risks associated with “adultification,” especially in the light of brain science studies which show that certain types of decision making ability doesn’t fully develop until well after 18. One member suggested that one impetus for lowering the municipal voting age was to create a group of voters who would be more amenable to voting favorably for tax overrides to support the schools.

A difficult constitutional question is raised by this article. Today, parents have a constitutional right to protect their children from certain speech. If the voting age is lowered and 16 year-olds become voters, candidates and lobbyists will have a free speech right to communicate with them. If you are a parent who wishes to shelter your child from certain speech (such as from a company lobbying for expanded access to a product you oppose), what can you do? The answer is not clear.

Finally, one member performed analysis of the registration and voting patterns of different quintiles of Brookline voters. In the most recent election, in the 18-19 age category there are 1,000 registered voters. 56 voted locally and 90 voted in state election. These sorts of

engagement numbers are similar until you reach voters over 50 years old. “If our goal is to raise engagement,” he said, “we need to focus on the 18-50 year-olds and not just add a few more voters to the rolls at the lower end.”

RECOMMENDATION:

By a vote of 4 - 20 with 1 abstention, the Advisory Committee recommends NO ACTION on Warrant Article 1 of Special Town Meeting 2.

ARTICLES 1-3

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On November 12, the Select Board voted FAVORABLE ACTION on the Advisory Committee motions under Articles 1 and 2.

**ROLL CALL VOTE:**

<u>Aye:</u>	<u>No:</u>
Franco	Greene
Heller	Fernandez
Hamilton	

The Select Board moved FAVORABLE ACTION on the following motion under Article 3.

VOTED: To refer the subject matter of Article 3 to the Licensing Review Committee.

**ROLL CALL VOTE:**

<u>Aye:</u>	<u>No:</u>
Greene	Heller
Franco	Fernandez
Hamilton	

More detail on the Board's position on these articles will be provided in the supplement to be distributed in the aisles the first night of Town Meeting.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

**SUMMARY:**

Special Town Meeting (STM) #3 is a citizen-petitioned special town meeting that seeks to amend the Town's General By-Laws to address issues that have affected Brookline Village and High Street Hill neighborhoods since March 2019, the start of retail sales of adult use marijuana in Brookline.

- The amendments affect all marijuana establishments in Brookline.
- They only apply to recreational sales of cannabis products, not medicinal sales.

Article 1 would amend Section 8.37.5 Paragraph B to limit the hours of operation to a maximum range of 10 a.m. to 8 p.m. Mondays through Saturdays and 12 p.m. to 6 p.m. on Sundays.

Article 2 would add a new subsection 18 to Section 8.37.5 Paragraph B to require that marijuana retailers operate on a reserve-ahead pick-up and appointment only basis.

Article 3 is a Resolution that asks Town Meeting to request that the Select Board not issue new operating licenses for retail marijuana establishments until a study committee assesses Brookline's by-laws and policies regulating the operation of those businesses, with a report no later than November 1, 2020.

The Advisory Committee recommends FAVORABLE ACTION on Articles 1, 2 and 3, as amended.

#### BACKGROUND:

At the May 2018 Annual Town Meeting, local legislation was passed in anticipation of State enabling legislation following the passage of a citizen initiative petition for the legalization of marijuana in Massachusetts.

Article 17, submitted by the Department of Planning and Community Development, amended the following sections of the Town's Zoning By-Laws: Section 2.13 ("M" Definitions); Section 4.07 (Table of Use Regulations); and created a new Section 4.13, Marijuana Establishments (General Requirements, Operational Requirements, Security-Specific Requirements, Access to Premises and Information/Reporting/Record-Keeping).

Articles 18-20 were submitted by the Select Board to amend Brookline's General By-Laws. Article 18 added Article 8.37 (Marijuana Establishments) setting out general requirements in Section 8.37.5 and licensing in Section 8.37.6. Article 19, which did not pass, would have allowed for a lower maximum number of marijuana retailers than the State statutory number of four. Article 20 added Article 8.38 (Marijuana and Hemp, and Marijuana and Hemp Products) and Section 8.38 (Definitions).

With regard to Warrant Article 17, new Section 4.13 of the Zoning By-Laws included the following requirements in Paragraphs 1 and 8:

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.
8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other

obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9.

The explanation for Warrant Article 17 notes: *“The Planning Department recommends being mindful of what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, the Planning Department suggests creating a queue system inside the building, which will take space from the total gross floor area.”* One of the reasons for requiring up to 5,000 square feet for retail marijuana establishments, with a 3,500 square foot ground floor area, was to enable all operations – including patron verification check point and queuing—to be located within the building, so the business would seamlessly fit into the existing commercial areas.

Article 18 added a new Section 8.37 (Marijuana Establishments) to the Town’s General By-Laws. Under Section 8.37.5.B (Operational Requirements) Paragraph 9 states that such establishments “shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties.” As did new Section 4.13, new Section 8.37 sets out what is meant by nuisance: *“Nuisance” includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment’s premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.*

On October 29, 2018, the Zoning Board of Appeals (ZBA) held a public hearing (2018 Decision No. 0073, 160 Washington Street, NETA). The minutes note that no one spoke in favor of the proposal; several members of the public are recorded as speaking in opposition. The Planning Board comment, which appeared in the report, included a concern about queuing obstructing the sidewalk, particularly during the first six months of operation, and recommended that all queuing be contained in the parking lot. It further recommended that “at least a four-foot width of sidewalk shall be unobstructed at all times.” NETA’s counsel told the ZBA that there would be two police officers present at all times. The minutes also note that the Petitioner met with municipal representatives from Police, Fire, Health and Transportation, and that the proposal was approved by the Building Department and recommended by the Planning Board.

On November 27, 2018 the Brookline Select Board voted Marijuana Establishment License Conditions for Adult Retail Sales. Condition #5 under General Requirements states the following: “After approximately 90 days from the commencement of Adult Use Sales, the Licensee will appear before the Select Board on the date noticed by the Board for a review of the impacts of the extended hours, and will provide the Board with such information as the Board or its designee requests in connection with such review.”

The Select Board never scheduled the 90-day review as required under the license. Prior to these Legislative and Board actions, the Select Board entered into a Host Community Agreement (HCA) with NETA on April 24, 2018. This HCA replaced and superseded the HCA that was signed in 2015 for the opening of NETA's Medical Marijuana Dispensary at the same Brookline Village location. Key provisions in the 16-page document include the following:

- Community Impact Fee of 3% of gross revenue sales from marijuana and marijuana product sales (medical and non-medical) for the calendar years 2019, 2020, 2021 and 2022;
- That the Establishment's hours shall not be a detriment to the surrounding area;
- That there shall be a parking attendant on site and designated patient/handicap parking zone within the Establishment's parking lot.
- That operations shall not "create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties." Nuisance is further described word-for-word as it appears in the Brookline's General and Zoning By-Laws.

## DISCUSSION:

### Public Concerns

STM #3 has generated a great deal of public concern. The citizen petition that initiated this STM had 877 signatures, far exceeding the statutory requirement of 200 signatures or 10% of the residents, whichever is less. The Advisory Committee public hearing on these articles, held in Town Hall on October 28<sup>th</sup>, lasted for nearly five hours and was attended by well over 100 residents. A link to the public hearing may be found here: [https://www.youtube.com/watch?v=eq67\\_9YLNae](https://www.youtube.com/watch?v=eq67_9YLNae)

The Advisory Committee also received over 200 letters from members of the public, the overwhelming majority of which expressed support for the warrant articles. The letters came primarily from residents in the Brookline Village, High Street Hill and Coolidge Corner neighborhoods – the locations of the two retail marijuana establishments that the Town has licensed. There are two more adult use marijuana retail businesses that have expressed interest in opening on Commonwealth Avenue, but those have not yet been licensed.

### Petitioners' View

The Petitioners identified both public safety and public nuisance concerns. They believe that by reducing NETA's hours of operations along with evening out the flow of sales throughout the day using a reservation-only sales model, these negative impacts would be mitigated. These mitigation responses would apply all cannabis retailers in the Town.

The Articles were filed based on the experience of Brookline Village and High Street Hill residents living with adult use marijuana retail sales at NETA for over six months. The

intent of the Petitioners, who include some of those residents is to find a means to better integrate NETA into the abutting neighborhoods. They emphasize Warrant Articles 1 and 2 would apply only to retail sales of recreational marijuana, not medical cannabis operations or delivery-only sales. According to data presented by Ranch Kimball in support of the petitioners, NETA, at approximately 10,000 square feet, has a significantly larger footprint than urban cannabis retailers in Colorado and Washington, offers significantly less parking and has the highest level of retail sales in the country, \$75.2 million. Most retailers have facilities that are 1,000 to 2,000 square feet with sales of about \$2 million.

#### A. The Problem

NETA's on-site parking lot was expected to hold 14 cars, including a designated patient/handicap parking zone within the company's parking lot. Instead, the parking lot contains two porta-potties and is being used for customer queuing. NETA has leased 15 spaces at the Homewood Suites down the block, however those spaces are only available for complimentary customer parking from 9 AM until 5 PM. NETA has estimated that it serves 3,600 customers per day. The lack of dedicated parking coupled with the enormous number of people driving to the site has meant a significant increase in the amount of traffic and parking in the neighboring streets.

A Walnut Street resident challenged the validity of the observations and conclusions of the Tetra Tech Traffic Monitoring Study commissioned by NETA dated August 1, 2019, and performed on Tuesday, June 18, and Wednesday, June 19, the two slowest days of the week, in both its observations and conclusions. This resident felt that the traffic study was deeply flawed and required better data.

The impact of NETA's operations on the immediate neighborhood since it commenced retail sales in March 2019 has been witnessed and documented by residents in the affected areas. The impacts identified by the neighbors that can be considered public "nuisances" under our By-Laws include: public consumption and intoxication, unruly behavior, public urination, the smell of pot on the street and litter; and public "safety" such as increased traffic, double parking, idling cars, blocking of driveways and parking congestion issues creating potential dangers to pedestrians and bikers.

#### B. The Remedies Sought

The remedies sought are (1) shorter hours in the evening, (2) shifting to a reserve-ahead appointment-based model, and (3) setting up a study committee to assess the effectiveness of the Town's marijuana by-laws and policies, given the recent experience with the sale of adult use retail sales of marijuana.

##### 1. Shorter Hours

Information presented to the Advisory Committee noted that a closing time of 7 or 8 o'clock at night is more typical than the 10 pm closing time currently in effect at NETA.



When considering an appropriate range of hours for a retail site, the location needs to be considered – is it in a rural area, an urban area, an office park with extensive parking, or a commercial area embedded in or abutting a residential neighborhood (which is the case for much of Brookline).

Residents noted that most businesses in the area close by 8 pm. That is also when families with young children have their children go to bed – a time when those who live in the area expect their streets to quiet down, and experience a peaceful end to their day.

## 2. Reserve-ahead Appointment-based model

The petitioners concluded that although reducing hours is necessary, it is not sufficient to mitigate NETA's neighborhood impacts. The Petitioners believe that changing to a reserve-ahead appointment system, as stipulated in Article 2, in conjunction with the reduced hours in Article 1, will be more effective. There are scheduling software solutions that could resolve queueing issues by regulating the flow of demand to reduce peaks.

Linda Plazonja, Citizens Assistance Officer, Office of the Mayor, Newton, MA described Newton's experience of with the Garden Remedies store in Newtonville. This store is located on Washington Street near the Whole Foods market and does not abut a residential neighborhood. It does not have any on-site parking, but it does require all customers to make an appointment. She reported that there are few, if any, complaints about the store and that it does not require a police detail. However, the Newton store is significantly smaller than NETA and has 1/5<sup>th</sup> the number of registers.

### NETA's response

NETA believes many of the negative impacts are already being responsively addressed. NETA asks that the mitigation impact fees it pays to the Town of Brookline be expended to further address public safety and public nuisance complaints, and notes that sales volume will be naturally decreasing in the future due to the opening of additional establishments in the greater Boston area and the opening of a third NETA facility in Franklin, as well as soon- to- be implemented State regulations governing marijuana delivery.

- 1) **Access:** Retail sales provide access to many people who, for a variety of reasons, are not eligible or do not want to register for medical sales, but receive major benefits from cannabis. These are individuals who may suffer from anxiety, pain, or the discomfort of cancer treatment. Curtailing the hours of operation or requiring reservations will impair the access of these individuals who, because of their illnesses, frequently cannot plan ahead; it will also make it difficult for people who work.
- 2) Demand, and therefore store volumes, will decrease as additional stores open in the greater Boston market and specifically in Brookline. NETA is selling all that it produces. It is at its regulatory production cap and, with the opening of its third store (in Franklin), the amount of products available for sale in Brookline will decrease. In

addition, she maintained that continued increases in operating efficiencies will lead to the eventual elimination of the lines.

- 3) NETA's Host Community Agreement (HCA) with Brookline requires the payment of impact fees to cover the cost to the community for mitigating the negative impacts of the business on the community. To date, NETA has paid approximately \$1.4 million to Brookline, and the Town has not spent any of this money. Expenditure of this money is being proposed as budget amendments under Special Town Meeting Warrant Article 3. NETA asked that the Town and Petitioners provide time for the impact of these expenditures to be shown.
- 4) NETA claimed that is responsive to the neighborhood and the larger Brookline community's concerns. Customers are encouraged to take the T. There is complimentary customer parking at the Homewood Suites garage, where NETA is leasing 15 spaces from 9 am to 5 pm. Employees are incentivized to take public transit, receive subsidized off-street parking and there is a one-strike policy for employees using on-street parking. There are ample lavatories: two porta potties in the parking lot and three facilities inside the building. Employees conduct regular litter pick-ups throughout Brookline Village. The parking lot, which was originally intended to hold 14 cars, is being used for waiting queues to keep customers off the sidewalk.
- 5) There are many changes occurring simultaneously in Brookline Village and NETA feels that it is being held accountable for all of their negative impacts: Children's Hospital, One Brookline Place, 700 Brookline Avenue (Hilton Garden Hotel), 20 Boylston (mixed-use at the former Dunkin Donuts), the Audi dealership construction and the use of the Old Lincoln School by the High School.

#### Other input

The Brookline Police Department affirmed that there has not been an increase in crime since March 1<sup>st</sup> of this year. Most of the issues they respond to are considered transient, and so often when they respond the situation is no longer happening. From March 1<sup>st</sup> to September 30<sup>th</sup> there were 1719 nuisance calls from the area around NETA. Parking nuisance calls rose from a yearly average of 30 to 40 to 103. There were 65 reported incidents of public consumption, which led to two citations. There were also three incidents of public urination near NETA.

The department has an officer assigned to Brookline Village for parking enforcement; there are undercover officers, and expanded bike patrols have been implemented using NETA impact fees. The \$21,000 that is covering the cost of the additional enforcement efforts by the police department was advanced by the Town to address immediate concerns. A budget amendment in the current warrant, if passed, would transfer \$379,944 in NETA impact fees to the Police Department and includes money to hire two additional parking enforcement officers and three additional officers for a bike unit.

#### Advisory Committee Discussion

Discussion focused on the potential impacts of the warrant articles on both the neighborhood's concerns and NETA's claims of adverse impacts on access to legal cannabis. The Petitioners' assertions that smoothing the flow of NETA's customers during its hours of operation will alleviate public safety and public nuisance concerns were explored. Committee members discussed that the combination of reduced hours along with a reserve-ahead and appointment model could help to reduce traffic congestion and lead to shorter queues.

The Committee asked whether the privacy of NETA's retail customers would be maintained in an appointment system. The CEO of NETA assured the Committee that the only data the business keeps is the zip code of its customers. NETA is required to verify the age of customers and although driver's licenses of customers are scanned to enter the facility, but that information is not retained by NETA.

The petitioner Paul Warren provided additional perspectives on the issue of privacy. He noted that in the Code of Massachusetts Regulations (CMR) are regulations that require cannabis operators to record and retain surveillance video – anonymity and privacy, therefore, are not a realistic expectations. Further, the video footage is required to be retained for at least 90 days and indefinitely if there is a pending investigation.

Petitioners reported that they spoke with the technology software provider (QLESS Systems) that manages the appointment system being used by Garden Remedies in Newton. They confirmed that an appointment can be made without the customer providing any identifiable personal information. Cannabis operators are also not required to maintain a log of IP addresses or phone numbers.

#### Plans for Sanctuary in Coolidge Corner

Jeffrey Allen, counsel for Sanctuary, which has been licensed to open in Coolidge Corner, told the Advisory Committee that they were planning to have an indoor queuing system for the Coolidge Corner store. He offered that they are not NETA and should be treated based on their own site plans. Sanctuary does not view reduced hours as problematic and, while they have no plans to secure off-site parking for customers, they will be subsidizing their employees' transportation costs. According to Mr. Allen, the Brookline Chamber of Commerce is supportive of Sanctuary, which is also working with the Coolidge Corner Merchants Association to create incentives for Sanctuary customers to frequent other stores in the area (rather than waiting outside if the queue is too long). The owner of Sanctuary does have some concern about the potentially adverse impact of an appointment system.

NETA has 30 points of sale, and all current queuing is outside. Sanctuary will have 18 points of sale, and has plans that enable 105 people to queue inside.

#### Store capacity

The Committee discussed NETA's claims that the store volume will soon begin to decline for reasons independent from the warrant articles. Sales are constrained by regulatory constraints and operational capabilities. A review of the Cannabis Control Commission (CCC) site shows that NETA was issued provisional licenses on July 26, 2018 for a Tier 6 indoor operation (40,000 square feet – 50,000 square feet) and for a Product Manufacturer. At present, its Franklin manufacturing operation has a total canopy of 20,804 square feet, which is equal to a Tier 4 level. NETA told the CCC in its application for a larger (Tier 6) indoor operation that it intends to expand its manufacturing capacity.

NETA will be opening a third retail business in Franklin, the location of its manufacturing operation, in addition to the ones open in Brookline and Northampton. There will be customers who will find it more convenient to go to Franklin. NETA's provisional Tier 6 license, however, means that NETA can double its current manufacturing capacity and so it is likely there will be enough product to supply the three stores without affecting sales.

#### Sunset clauses for closing time limits

The Committee discussed the "sunset clause" in Articles 1 and 2, which ends their applicability on June 21, 2022. Some members felt that more stores in the Greater Boston area would be opened within the next couple of years and thought this portion of the proposed change in by-law should sunset earlier. The Committee considered amendments to shorten the sunset periods, but the amendments failed.

The Committee also voted on a motion was made to restore the Article 1 s original time of 7 pm, which failed..

The discussion of Article 2 (sales by appointment) was more divided. Representatives from both NETA and Sanctuary expressed opposition to that restriction, which could affect the profitability of the businesses.

#### Financial impact on the Town

NETA sales tax revenues since March are approximately \$1.1 million. A little less than one million dollars is projected for FY2020. Approximately \$350,000 of the funds received from NETA was budgeted by the Town for its FY 2020 operating budget. If NETA's volume is reduced, it will cut down sales tax revenues and the Town will need to raise funds elsewhere or cut services.

The petitioners estimate that the impact on sales tax revenue will be a decrease of \$250,000; this assumes a 10% reduction in revenues for NETA. NETA, however, stated that it projects a 50-60% revenue loss as a result of the impact of these warrant articles. There is no certainty to these projections at either end of the spectrum. A member of the Advisory Committee noted that there could also be a significant erosion of revenue as additional stores open in the greater Boston area, and that a \$250,000 reduction in sales tax revenue is a working number of reasonable magnitude.

### Article 2 Appointment Windows

The Committee voted to amend Article 2 to clarify the language that each business could determine the time *or times* at which a pick-up may be made.

### Article 3 – Moratorium on additional licenses

Passage of this Article would not impact the store opening in Coolidge Corner next spring. Since a temporary ban won't affect the two retailers that have already been issued licenses by the Town, and the other two applicants are very early in the review process, the 12-month hiatus was not viewed as a significant delay. The goal of Article 3 would be slow down the process a little, providing the opportunity to study the Town's current regulations and best practices going forward, given the experience of Brookline residents.

### Future impact of store openings in Boston and Newton

Boston can open up to 40 retail marijuana businesses, but it has licensed only 13 and that to-date no business has opened. Newton has a Marijuana Host Community Agreement Advisory Group to advise the Mayor, and the City has moved more slowly into the cannabis market. Newton could eventually have a total of eight stores but to-date has approved only four move forward in the licensing process and has only one in operation.

Newton's mayor has said that the city would be moving forward with provisional host agreements with three of the six applicants. The reasons given for not moving forward with the others included safety and traffic concerns, lack of adequate dedicated parking and a weak community relations plan.

While it is difficult to compare Brookline's situation to that of Newton—Brookline is more urban and is more accessible from Boston—the Committee members were in agreement that Boston's failure to open any of its forty cannabis retailers has likely been a major contributor to the high volumes at NETA. For the past seven months NETA has been the only retail site in operation in the Greater Boston area.

### Moderators Committee vs. Select Board Committee

The Select Board can appoint a committee to review cannabis operations without a warrant article. The Petitioners decided to amend Article 3 by having the Moderator appoint the study committee because they see the Select Board as unresponsive to the concerns that residents have raised. Establishing a Moderator's Committee does require the passage of a warrant article.

### Brookline's "test case" experience

NETA's retail business regulations were approved before any establishments opened in Massachusetts and is in some sense a test case. Therefore, it is reasonable to have the expectation of a need to readjust the rules.

The Advisory Committee also discussed but did not factor into its decision NETA's potential legal challenge to Town Meeting's authority to create or amend the town's by-laws with respect to marijuana retailers on the basis that these regulations are within the scope of Zoning By-laws, not the General By-laws.

The Host Community Agreement and NETA's license to NETA contain provisions expressly stating that the Select Board has the right to approve of the hours of operation, and there is no requirement that only the Zoning Board of Appeals can regulate NETA's operations. It was pointed out that NETA appears to be in violation of Section 4 ("Stipulations Pertaining to the Establishment's Operation"), paragraph f, which provides that "The Establishment's operations under the Company's applicable Marijuana Retailer license shall be conducted within the building." It may also be in violation of Section 4, par. p: "Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties."

#### RECOMMENDATION:

By a vote of 24-1 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 1, as amended.

By a vote of 17-7-with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 2, as amended.

By a vote of 20-2 with 4 abstentions, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 3, as amended.

See below for the amended text of all three articles.

#### Article 1

VOTED: The Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B.5 as follows (additions are denoted in **bold, italicized text**, deletions are denoted in ~~stricken~~ text):

The hours of operation of Marijuana Establishments shall be set by the Select Board *with the maximum range of hours for Marijuana Retailers (not to include either Medical Marijuana Treatment Centers or Delivery-Only Marijuana Retailers) being 10 a.m. to 8 p.m. on Mondays through Saturdays, and 12 p.m. to 6 p.m. on Sundays*. The Licensee shall not change its hours of operation without Board approval. *The maximum range of hours of operation set forth in this Paragraph B.5 shall terminate on June 1, 2022*

## **Article 2**

VOTED: The Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B., as follows (additions are denoted in **bold, italicized text**):

Add the following new subsection:

*18. Purchases by customers from Marijuana Retailers (not to include either Medical Marijuana Treatment Centers or Delivery-Only Marijuana Retailers) shall be made solely on a reserve ahead basis for pick up at the Marijuana Retailer facility, provided, however, that if a customer requires the assistance of a marijuana consultant at the facility, an advance appointment is required; all such reserve ahead purchases require confirmation of the time or times at which a pick-up may be made; and, all reserve ahead pick-ups and appointments for consultation shall be scheduled and, if necessary, limited, to avoid nuisance conditions in surrounding neighborhoods as provided in Section 8.37.5, Paragraph B.9. above, as well as to otherwise comply with State and local law. This Paragraph B.18 shall terminate on June 1, 2022*

## **Article 3**

VOTED: BE IT RESOLVED, that Town Meeting requests that the Select Board not issue new operating licenses for Retail Marijuana Establishments until such time as: (1) the Moderator appoints a study committee, which shall include, among others, representatives from impacted neighborhoods, to assess the effectiveness of Brookline's marijuana by-laws and policies given Brookline's recent experience with the sale of recreational marijuana including NETA's operation and its neighborhood impact, and (2) the appointed study committee submits its findings and recommendations at a public hearing held by the Select Board no later than November 1, 2020.